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Report of the Committee against Torture

Thirty-ninth session (5-23 November 2007)

Fortieth session (28 April-16 May 2008)

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 16 May 2008, the closing date of the fortieth session of the Committee against Torture (hereinafter referred to as "the Committee"), there were 145 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"). The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report Thailand has become party to the Convention. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations website (www.un.org - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirty-ninth session (781st to 810th meetings) was held at the United Nations Office at Geneva from 5 to 23 November 2007, and the fortieth session (811th to 836th meetings) was held from 28 April to 16 May 2008. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.781-836).

C. Membership and attendance at sessions

5. The eleventh meeting of the States parties to the Convention against Torture, which took place in Geneva on 8 October 2007, held elections to replace five members whose term of office expired on 31 December 2007. The list of members with their term of office appears in annex IV to the present report.

D. Solemn declaration by the newly elected members

6. At the 811th meeting on 28 April 2008, Ms. Myrna Kleopas and Mr. Adoulaye Gaye, made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

7. At the fortieth session, on 28 April 2008, the Committee elected Mr. Claudio Grossman as Chairperson and Ms. Saadia Belmir, Mr. Luis Gallegos and Ms. Nora Sveaass as vice-chairpersons and Ms. Myrna Kleopas as rapporteur.

F. Agendas

8. At its 781st meeting, on 5 November 2007, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/39/1) as the agenda of its thirty-ninth session.

9. At its 811th meeting, on 28 April 2008, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/40/1) as the agenda of its fortieth session.

G. Participation of Committee members in other meetings

10. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR): the Sixth Inter-Committee Meeting, held from 18 to 20 June 2007, was attended by Ms. Belmir, Ms. Sveaass and Mr. Mavrommatis; the latter also participated in the Nineteenth Meeting of Chairpersons from 21 to 22 June 2007. Mr. Gallegos and Ms. Sveaass participated in an expert seminar to discuss freedom from torture, cruel, inhuman or degrading treatment or punishment of persons with disabilities on 11 December 2007. Ms. Sveaass also participated in a meeting organized to assist the Special Rapporteur on how to improve the protection of women from torture on 24 December 2007.

H. General comments

11. At its thirty-ninth session, the Committee adopted its general comment on the implementation of article 2 of the Convention by States parties. The document has been made public as CAT/C/GC/2 and as annex VI of the present report.

I. Activities of the Committee in connection with the Optional Protocol to the Convention

12. As required by Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, on 20 November 2007, a joint meeting was held between the members of the Committee against Torture and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter "the Subcommittee on Prevention") (membership of the Subcommittee on Prevention is included in annex V). Both the Committee against Torture and the Subcommittee on Prevention agreed to set up an informal contact group composed of Mr. Wang and Ms. Sveaass for the Committee and Mr. Coriolano and Mr. Tayler for the Subcommittee. A joint statement, with reference to their mutual cooperation, was issued following the first joint meeting (CAT/C/SR.802). A further meeting was held between the Committee and the Subcommittee on 13 May 2008, where the Subcommittee submitted its first public annual report to the Committee (CAT/C/40/2 and Corr.1). The Committee decided to transmit it to the General Assembly (see annex VII).

J. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

13. A joint statement with the High Commissioner for Human Rights, the Subcommittee on Prevention of Torture; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture was adopted to be issued on 26 June 2008, the International Day in Support of Victims of Torture (see annex VIII).

K. Participation of non-governmental organizations

14. The Committee has long recognized the work of non-governmental organizations (NGOs) and met with them in private, with interpretation, on the afternoon immediately before the consideration of each State party report under article 19 of the Convention. The Committee considers that this new practice, which has replaced the informal lunchtime briefings that did not have interpretation, is more useful, as all members are able to participate to the discussion. The Committee expresses its appreciation to the NGOs, for their participation in these meetings and is particularly appreciative of the attendance of national NGOs, which provide immediate and direct information.

L. Participation of national human rights institutions

15. Similarly, the Committee has since 2005 met with the national human rights institutions (NHRIs) as well as other institutions both academic and of civil society where these exist, of the countries it has considered. Meetings with each NHRI which attends take place, in private, usually on the day before consideration of the State party report.

16. The Committee is extremely grateful for the information it receives from these institutions, and looks forward to continuing to benefit from the information it derives from these bodies, which has enhanced its understanding of the information before the Committee.

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

17. During the period covered by the present report eight reports from States parties under article 19 of the Convention were submitted to the Secretary-General. Initial reports were submitted by Honduras, Nicaragua and Chad. Second periodic reports were submitted by El Salvador and the Philippines. A third periodic report was submitted by Azerbaijan. A fourth periodic report was submitted by Colombia and a fifth periodic report was submitted by Spain.

18. As of 16 May 2008, the Committee had received a total of 210 reports.

19. As at 16 May 2008, there were 227 overdue reports (see annex IX).

20. The Committee with two sessions per year is only able to deal with 14 reports, consequently, since 2005 and as an exceptional measure, it has decided to consolidate overdue reports. This measure is reviewed on a case-by-case basis after the consideration of a report, in particular when the Committee considers that the information provided by the State party covers the entire overdue reporting period. The Committee indicates the new date and number of report that the State party should submit in the last paragraph of the concluding observations.

21. At its thirty-eighth session in May 2007, the Committee adopted a new procedure on a trial basis which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report. The State party's replies to the list of issues would constitute the State party's report under article 19 of the Convention. The Committee is of the view that this procedure could assist States parties in preparing focused reports. The lists of issues prior to reporting could guide the preparation and content of the report, and the procedure would facilitate reporting by States parties and strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.

22. The Committee has decided to initiate this procedure in relation to periodic reports that are due in 2009 and 2010. It will not be applied to States parties' reporting obligations where initial reports are concerned or to periodic reports for which a previous report has already been submitted and is awaiting consideration by the Committee. On 15 May 2007, the Committee met with States parties and introduced and discussed the new procedure. The Committee adopted lists of issues for States parties whose reports are due in 2009, at its thirty-ninth session in November 2007. The lists of issues were transmitted to the respective States parties on 28 February 2008, with a request that replies be submitted by 30 June 2009, should the State party wish to avail itself of this new procedure.

23. In addition, the Committee requested information from the 11 States parties eligible for this procedure as to their intention of availing themselves of the new procedure. This information was requested to allow the Committee to plan its meeting requirement to ensure the timely consideration of these reports. As of 16 May 2008, the Czech Republic, Ecuador, Greece, Kuwait, Monaco and Turkey had officially confirmed that they would avail themselves of the new procedure. In addition, Bosnia and Herzegovina, Cambodia and Peru had informally notified the Committee that they too would avail themselves of the new procedure.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

24. At its thirty-ninth and fortieth sessions, the Committee considered reports submitted by 14 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its thirty-ninth session and it adopted the respective concluding observations:

Benin	Second periodic	CAT/C/BEN/2	CAT/C/BEN/CO/2
Estonia	Fourth periodic	CAT/C/80/Add.1	CAT/C/EST/CO/4
Latvia	Second periodic	CAT/C/38/Add.4	CAT/C/LVA/CO/2
Norway	Fifth periodic	CAT/C/81/Add.4	CAT/C/NOR/CO/5 and Corr.1
Portugal	Fourth periodic	CAT/C/67/Add.6	CAT/C/PRT/CO/4
Uzbekistan	Third periodic	CAT/C/UZB/3	CAT/C/UZB/CO/3

25. The following reports were before the Committee at its fortieth session and it adopted the following concluding observations:

Algeria	Third periodic	CAT/C/DZA/3	CAT/C/DZA/CO/3
Australia	Third periodic	CAT/C/67/Add.7	CAT/C/AUS/CO/3
Costa Rica	Second periodic	CAT/C/CRI/2	CAT/C/CRI/CO/2
Iceland	Third periodic	CAT/C/ISL/3	CAT/C/ISL/CO/3
Indonesia	Second periodic	CAT/C/72/Add.1	CAT/C/IDN/CO/2
The former Yugoslav Republic of Macedonia	Second periodic	CAT/C/MKD/2	CAT/C/MKD/CO/2
Sweden	Fifth periodic	CAT/C/SWE/5	CAT/C/SWE/CO/5
Zambia	Second periodic	CAT/C/ZMB/2	CAT/C/ZMB/CO/2

26. In accordance with rule 66 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its conclusions and recommendations.

27. Country rapporteurs and alternate rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex X to the present report.

28. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

29. The Committee has adopted a new format for these following deliberations held by the Inter-Committee Meeting and the meeting of Chairpersons of the human rights treaty bodies. The text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned reports submitted by States parties is reproduced below.

30. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands States parties wish to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless has to point out that the drafting of lists of issues has increased the Committee's workload substantially. This is particularly significant in a Committee with such a small membership.

31. The Committee has decided to revise its reporting guidelines for initial and periodic reports in order to bring these in line with the guidelines for the common core document (HRI/MC/2006/3).

32. **Benin**

(1) The Committee against Torture ("the Committee") considered the second periodic report of Benin (CAT/C/BEN/2) at its 797th and 800th meetings, held on 15 and 16 November 2007 (CAT/C/SR.797 and 800), and adopted, at its 807th meeting on 22 November 2007 (CAT/C/SR.807), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the report of Benin, which follows the Committee's general guidelines for the preparation of reports, and expresses its appreciation for the opportunity thus afforded to resume its dialogue with the State party. The Committee regrets, however, that the report was submitted with an eight-year delay and that the State party did not make the necessary efforts to implement all the recommendations made by the Committee during the consideration of the initial report of Benin, in 2001 (A/57/44, paras. 30 to 35).

(3) The Committee commends the frankness of the report, which acknowledges shortcomings in the State party's implementation of the Convention. The Committee appreciates the constructive dialogue established with the high-level delegation sent by the State party and notes with satisfaction the replies provided to the questions raised during the dialogue. Lastly, the Committee is gratified that national non-governmental organizations were present during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the State party's efforts to reform its legal and institutional system. In particular, the Committee notes with satisfaction the following positive developments:

(a) The ratification by the State party, on 20 September 2006, of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention");

(b) The ratification by the State party, on 22 January 2002, of the Rome Statute of the International Criminal Court;

(c) The ratification by the State party, on 31 January 2005, of the two Optional Protocols to the Convention on the Rights of the Child;

(d) Recent efforts to strengthen the national legal framework, including:

(i) The publication of the full text of the Convention in the Official Journal on 5 September 2007;

(ii) The adoption on 30 January 2006 of Act No. 2006-04 on conditions for the displacement of minors and the suppression of child trafficking in Benin;

(iii) The adoption on 3 March 2003 of Act No. 2003-07 on the suppression of female genital mutilation in Benin.

(5) The Committee commends the implementation of the 2005-2007 Plan for the Strengthening of the Legal and Judicial Systems (2005-2007) and the State party's efforts to improve conditions of detention with the support of the United Nations Development Programme.

C. Subjects of concern and recommendations

Definition of torture

(6) Notwithstanding the Constitutional provisions prohibiting torture, the Committee regrets the absence of a definition of torture and of torture as a specific offence in the State party's criminal legislation, despite the Committee's recommendation to that effect during the consideration of the initial report of Benin in 2001. The Committee takes note, however, of the undertaking given by the delegation to include the definition of torture and characterize it as an offence in the draft Criminal Code (arts. 1 and 4).

The State party should take urgent measures to review its criminal legislation so as to include a definition of torture that covers all the elements contained in article 1 of the Convention, as well as provisions criminalizing acts of torture and appropriate penalties which take into account the grave nature of such acts.

Absolute prohibition of torture

(7) The Committee is concerned that there is no clear provision in the State party's criminal legislation to ensure that the absolute prohibition against torture is non-derogable (arts. 2 and 15).

The State party should incorporate the principle of absolute prohibition of torture into its criminal legislation, which should provide that an order from a superior officer may not be invoked as a justification of torture, and prohibit the use of confessions obtained through torture.

Obligation to investigate and right to complain

(8) The Committee is concerned about the existing provisions of the Code of Criminal Procedure on legal proceedings whereby such proceedings may be instituted only at the request of the Public Prosecutor's Office, following a complaint by the victim, which is clearly contrary to article 12 of the Convention (art. 12).

The State party should consider abrogating the system of discretionary prosecution in order to comply with article 12 of the Convention and to remove all doubt regarding the obligation of the competent authorities to institute, systematically and on their own initiative, without a prior complaint from the victim, objective and impartial inquiries wherever there is reasonable ground to believe that an act of torture has been committed.

(9) The Committee regrets that persons suspected of having committed acts of torture have reportedly been protected by Act No. 90-028 of 9 October 1990 granting amnesty for acts, other than those covered by ordinary law, committed between 26 October 1972 and the date of promulgation of the Act, and deplores the resulting impunity (art. 12).

The State party should ensure that all allegations of acts of torture and ill-treatment are investigated, including those committed between 1972 and 1990, set up a truth commission to shed light on the allegations, and consider abrogating the Amnesty Act of 1990 with a view to prosecuting and punishing the authors of those acts.

(10) The Committee is concerned at the lack of appropriate legislation and of any effective, independent mechanism to enable victims of torture and ill-treatment to complain and have their case examined promptly and impartially. The Committee also deplores the lack of victim and witness protection legislation and mechanisms (arts. 13 and 14).

The State party should establish a fully independent complaints mechanism for victims of torture and ensure that measures are adopted to afford adequate protection to all persons who report acts of torture or ill-treatment. The State party should also enhance the capacity of the standing committee for the compensation of victims of injury caused by the State, established by Decree No. 98-23 of 29 January 1998.

Non-refoulement

(11) The Committee is concerned at the lack of a legislative framework regulating expulsion, refoulement and extradition. In addition, the Committee is particularly concerned at the fact that the State party's current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture (arts. 3 and 8).

The State party should adopt a legislative framework regulating expulsion, refoulement and extradition in fulfilment of its obligation under article 3 of the Convention. The State party should also take urgent measures to bring current expulsion, refoulement and extradition procedures and practices fully into line with article 3 of the Convention, in particular:

(a) Article 21 of the draft Criminal Code should be amended to include the "danger of being subjected to torture" as one of the grounds for the refusal of extradition, as required by article 3 of the Convention;

(b) The expulsion, refoulement and extradition of individuals, including undocumented individuals, should be decided by a court after careful assessment of the risk of torture in each case and should be subject to appeal with suspensive effect;

(c) The terms of judicial cooperation agreements signed with neighbouring countries should be revised so as to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.

Fundamental safeguards

(12) The Committee notes with concern that the existing provisions of the Code of Criminal Procedure do not specifically provide for the right of access to a lawyer for persons held in police custody. Of equal concern to the Committee is the fact that a medical examination, which is carried out by a doctor designated by the public prosecutor, is permitted only by decision of the latter or at the request of the detainee. Lastly, the Committee regrets that defendants rarely request legal assistance (arts. 2 and 11).

The State party should reform the provisions of its Code of Criminal Procedure relating to police custody so as to ensure that persons held in custody are effectively protected from physical and mental harm. In particular, the draft Code of Criminal Procedure should guarantee the right to consult a

lawyer and a doctor of one's choice and to contact family members, and should also include the principle of presumption of innocence and the obligation to inform all arrested persons of their right to receive legal assistance.

Administration of justice

(13) The Committee notes with concern that the information received reveals flaws in the State party's justice administration system. There are allegations of widespread corruption among judges and police and gendarmerie officers. The Committee is also concerned about the current provisions of the Code of Criminal Procedure empowering the public prosecutor to remove a judge from a case, which jeopardizes the independence of the judiciary (arts. 2 and 12).

The State party should take the necessary steps to remedy the shortcomings in the administration of justice, for instance by allocating adequate resources and continuing its efforts to combat corruption. It should also take steps to address the insufficient number of judges and consider reviewing the country's map of judicial districts. The State party should take effective measures to make the judiciary fully independent, in accordance with the related international standards.

(14) The Committee regrets that, under Beninese criminal law, a minor aged over 13 may be sentenced to deprivation of liberty.

The State party should take the necessary measures to raise the age of criminal responsibility to an internationally acceptable level.

Universal jurisdiction

(15) The Committee is concerned about the existing provisions of the Code of Criminal Procedure which do not enable the State party to establish and exercise its jurisdiction over acts of torture in accordance with the provisions of the Convention (arts. 6 and 8).

The State party should take the necessary measures to establish and exercise its jurisdiction over acts of torture when the alleged author of the offence is in Benin, either to extradite or to prosecute him or her, in accordance with the provisions of the Convention.

(16) The Committee is concerned about information regarding the existence of an agreement between Benin and the United States of America whereby United States nationals in the territory of Benin cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (art. 9).

The State party should take appropriate measures to review the terms of this agreement which prevents the transfer of United States nationals in the territory of Benin to the International Criminal Court, in accordance with the provisions of the Convention.

Systematic review of detention facilities and living conditions in prisons

(17) The Committee regrets that, according to information received, some non-governmental organizations (NGOs) do not have systematic access to detention centres. The Committee takes note, however, of the undertaking given by the delegation to remedy the situation by granting NGOs permanent access to detention facilities. While welcoming the bill on the establishment of a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the Committee regrets that no systematic inspection mechanism is currently operational in Benin (art. 11).

The State party should take appropriate measures to grant all NGOs permanent access to detention facilities, pursuant to the undertaking given by the delegation on this subject. The State party should also take the necessary steps to adopt the bill on the national prevention mechanism and to accelerate the process of its establishment.

(18) While taking note of the efforts made by the State party to improve prison conditions, the Committee remains deeply concerned about living conditions in detention facilities. The Committee has received reports of overcrowding, corruption of prison officials by detainees, lack of hygiene and adequate food, prevalence of disease and lack of adequate health care. The Committee has also received reports that minors are not kept completely separate from adults and that accused persons are not kept separate from convicted persons (arts. 11 and 16).

Without waiting for the national prevention mechanism to be established, the State party should take urgent measures to bring conditions in detention centres into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State party should allocate all the material, human and budgetary resources necessary for this purpose and give priority to:

(a) Reducing overcrowding and the high number of prisoners in pretrial detention;

(b) Improving food and health care provision for detainees;

(c) Reorganizing prisons so that accused persons are detained separately from convicted persons and improving conditions of detention of minors, ensuring that they are detained separately from adults in all circumstances;

(d) Appropriate measures to put a definitive end to alleged corruption and ransom demands in prisons;

(e) Strengthening judicial supervision of conditions of detention.

(19) The Committee expresses concern at the deplorable conditions of detention of convicted prisoners on death row, which amount to cruel, inhuman or degrading treatment (art. 16).

The State party should take all necessary measures to improve the conditions of detention of prisoners on death row in order to guarantee their basic needs and rights. The State party should take urgent measures to establish a moratorium on executions and to commute death sentences. The Committee also wishes to be informed of the status of the bill on the abolition of the death penalty.

National Human Rights Commission

(20) The Committee regrets that the Benin Human Rights Commission is no longer operational (arts. 11 and 13).

The State party should take steps to operationalize the Benin Human Rights Commission and make it conform to the Paris Principles.

Violence perpetrated by law enforcement officials

(21) The Committee expresses its concern at allegations of beatings by law enforcement officials of the State party and regrets the lack of information on the extent of this practice (arts. 12 and 16).

The State party should send a clear message to law enforcement officials that violence and ill-treatment are unacceptable. It should, moreover, take the necessary steps to end this practice and to ensure that prompt, impartial and effective investigations are conducted into allegations of ill-treatment by law enforcement officials and that those responsible are prosecuted and punished with appropriate penalties.

Torture and cruel, inhuman or degrading treatment of children

(22) While taking note of the State party's legislative efforts, in particular to eradicate ill-treatment of children, the Committee remains concerned about reports of trafficking, exploitation, prostitution, female genital mutilation, rape and killing of newborn babies. The Committee regrets the lack of statistical data on reports of violence against children and related convictions (arts. 1, 2, 12 and 16).

The State party should take effective measures to combat and eradicate torture and cruel, inhuman or degrading treatment by adopting a holistic approach to the problem. The State party should take all necessary measures to ensure strict implementation of the relevant legislation by prosecuting and punishing those responsible for such acts. The State party should consider setting up an observatory on the rights of the child, resume consideration of the bill on "vidomégons" and strengthen the system of care for child victims of violence.

(23) While noting that the State party's legislation prohibits corporal punishment in schools (Circular No. 100/MEN/CAB of 1962), the Committee remains concerned about the absence of legislation prohibiting such punishment in the family and in institutions other than schools. The Committee is also concerned at the frequent use of this practice in education in Benin (art. 16).

The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools. The State party should ensure that legislation prohibiting corporal punishment is strictly enforced and awareness-raising and educational campaigns should be conducted to that effect.

Violence against women

(24) The Committee acknowledges the State party's efforts to strengthen the legal framework relating to violence against women and trafficking in women and regrets that the draft Criminal Code does not include a specific offence of domestic violence and trafficking in women. The Committee notes with concern reports of widespread violence against women, particularly trafficking, rape and violence in the family, and regrets the low number of complaints and convictions (arts. 2, 4, 12, 14 and 16).

The State party should adopt all appropriate measures to prevent, combat and punish violence against women, for instance by incorporating into the draft Criminal Code the offences of family violence, marital rape and trafficking in women and by promptly adopting the bill on the prevention, control and repression of violence against women in Benin. The State party should also set up a rehabilitation and support system for victims.

Mob justice

(25) The Committee is concerned at reports that the phenomenon of mob justice persists (art. 16).

The State party should strengthen its efforts to eliminate the problem of mob justice. The Committee invites the State party to undertake a thorough review of the obstacles to the eradication of the phenomenon and to consider more effective approaches.

Training on the prohibition of torture

(26) While acknowledging the State party's significant efforts in providing human rights training to State officials, the Committee regrets, however, the lack of information regarding specific training on the prohibition of torture and cruel, inhuman or degrading treatment and punishment (art. 10).

The State party should strengthen human rights training programmes for law enforcement officials so as to incorporate the prohibition of torture and cruel, inhuman or degrading treatment and punishment. Such training should also be provided to medical staff.

(27) The Committee reiterates the recommendation it made during the consideration of the report of Benin in 2001 that the State party should make the declarations provided for in articles 21 and 22 of the Convention.

(28) The Committee encourages the State party to involve NGOs and academic experts in the review of national legislation, including the draft Criminal Code and the draft Code of Criminal Procedure, with a view to bringing them into line with the provisions of the Convention. The State party should take the necessary steps to adopt these draft Codes forthwith.

(29) The State party, with the support of academic institutions, should establish effective mechanisms to collect data and develop criminal and criminology statistics and all statistics relevant to monitoring the national implementation of the Convention. The State party should thus provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of obligations under the Convention:

(a) Statistics on the reception capacity and population of each prison in Benin, including data disaggregated by gender and age group (adults/children), and the number of pretrial detainees;

(b) Statistics on violence in detention centres and police and gendarmerie stations;

(c) Statistics on complaints of alleged torture and action taken;

(d) Statistics on corruption among law enforcement officials and penalties imposed;

(e) Statistics on cases of extradition, expulsion or refoulement, including information on the handing over of detainees under subregional agreements;

(f) Statistics on violence against women and children and outcomes of proceedings instituted.

(30) The Committee welcomes the assurances provided by the delegation that information would be submitted regarding the questions that remained unanswered, including information on the situation of the 13-year-old girl raped by three male nurses in April 2005, on the proceedings initiated and penalties imposed.

(31) The State party is encouraged to disseminate widely the reports submitted by Benin to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(32) The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.4).

(33) The Committee takes note of the undertaking given by the State party's delegation to implement the Committee's recommendations and requests the State party to provide, within one year, information on action taken in response to the Committee's recommendations on the necessary review of the draft Criminal Code and the draft Code of Criminal procedure and on the recommendations contained in paragraphs 11 and 18 above.

(34) Having concluded that during the consideration of the State party's report sufficient information was presented to make up for the delay in submitting its second report, the Committee requests the State party to submit its next periodic report, which will be considered as its third periodic report, by 30 December 2011.

33. Estonia

(1) The Committee against Torture considered the fourth report of Estonia (CAT/C/80/Add.1) at its 793rd and 796th meetings (CAT/C/SR.793 and 796), held on 13 and 14 November 2007, and adopted at its 804th meeting on 20 November 2007 (CAT/C/SR.804) the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the fourth periodic report of Estonia, which generally follows the Committee's guidelines for reporting and expresses its appreciation for the written responses (CAT/C/EST/Q/4/Add.1) provided to its list of issues (CAT/C/EST/Q/4).

(3) The Committee also appreciates the large and high-level delegation of the State party and the positive and frank dialogue conducted with it, as well as the additional oral information provided by the representatives of the State party to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the ratification, inter alia, of:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2006;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2004;

(c) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2003;

(d) The United Nations Convention against Transnational Organized Crime, in 2003.

(5) The Committee also welcomes the entry into force of:

(a) The Victim Support Act in 2004 and its amendment in 2007;

(b) The State Legal Aid Act, in 2005;

(c) The new Code of Criminal Procedure, in 2004;

(d) The amendment to the Refugees Act, in 2003.

(6) The Committee further notes with satisfaction the important effort made for the renovation of detention facilities, the closure of old arrest houses and the construction of new prisons, especially the Tartu prison which opened in 2002, to improve the general living conditions of all persons deprived of liberty in the State party, as well as to move from an old style camp-based system to a modern cell-based penitentiary system.

(7) The Committee notes positively the publication of the reports of the European Committee for the Prevention of Torture and the responses by the State party, which enables a general debate by all interested parties.

C. Principal subjects of concern and recommendations

Definition of torture

(8) While noting that the Convention has entered into force in the State party in 1991 and the Penal Code in 2002, the Committee continues to regret that the definition contained in article 122 of the Penal Code, even if read in conjunction with the criminal offenses of articles 291, 312 and 324 of the Penal Code, does not fully reflect all elements contained in article 1 of the Convention, notably mental pain and suffering, discrimination and acquiescence of a public official (art. 1).

The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (a)) that the State party should bring its definition of torture fully into conformity with article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.

Fundamental legal safeguards of detained persons

(9) The Committee is concerned about the practical implementation of the fundamental legal safeguards of detained persons, including access to an independent medical doctor, as well as about the registration of all detained persons (art. 2).

The State party should ensure that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention, including the right to access a lawyer, and an independent medical examination, inform a relative and to be informed of their rights at the moment they are deprived of their liberty, including about the charges brought against them, as well as to be promptly presented to a judge.

Administrative detention

(10) The Committee is concerned about the possibility of "administrative detention in jail" and "administrative arrest" (paragraphs 89 and 215 of the State party report) and about the complete absence of information on such detention in the report as well as from the delegation, especially regarding the competent authority and the applicable legal safeguards (art. 2).

The State party should provide the Committee with detailed information on such "administrative detention" and insure that the fundamental legal safeguards also apply in such cases.

Chancellor of Justice

(11) While noting that the Chancellor of Justice has been designated as the national protection mechanism pursuant to article 3 of the Optional Protocol the Convention, recognizing its role in inspecting places of detention and welcoming the publication of its reports in different languages, the Committee remains concerned about its independence, mandate and resources, as well as its ability to investigate all complaints of violation of the provisions of the Convention (arts. 2 and 11).

The State party should consider establishing a national institution for the promotion and protection of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and provide it with the adequate resources to carry out its mandate.

Non-refoulement

(12) While noting that the determination of "a safe country is done on an individual basis by the Citizenship and Migration Board" as well as the list of countries to which persons have been expelled, the Committee is still concerned that the application of the principle of "safe country" may prevent the State party from considering all elements of an individual case, thus not fulfilling all its non-refoulement obligations under the Convention (art. 3).

The State party should always assess its non-refoulement obligations under article 3 of the Convention on an individual basis and provide, in practice, all procedural guarantees to the person expelled, returned or extradited.

Appropriate penalties for acts of torture in the Penal Code

(13) The Committee remains concerned about the inadequacy of the penalties applicable to torture, i.e. of articles 122, 291, 312 and 324 of the Penal Code, ranging from "pecuniary punishment" to a maximum of five years imprisonment (art. 4).

The State party should ensure that torture is punishable by appropriate penalties which take into account its grave nature, as set out in paragraph 2 of article 4 of the Convention.

Training and education on the provisions of the Convention

(14) The Committee is concerned about the insufficient training regarding the provisions of the Convention for law enforcement personnel, including penitentiary staff, judges and prosecutors. The Committee also notes with concern the lack of specific training of medical personnel acting in detention facilities to detect signs of torture and ill-treatment (arts. 10 and 15).

The State party should reinforce its training programmes for all law enforcement personnel on the absolute prohibition of torture and other ill-treatment, as well as for prosecutors and judges on the State party's obligations under the Convention. This should include the inadmissibility of confessions and statements obtain as a result of torture.

The State party should also ensure adequate training for all medical personnel involved with detainees to detect signs of torture and other ill-treatment in accordance with international standards, such as outlined in the Istanbul Protocol.

Complaints, investigations and appropriate sentencing

(15) The Committee notes the supervision activities of prisons by the Ministry of Justice, of arrest houses by the Police Board, of psychiatric institutions by the Health Board and of the Illuka Reception Centre for Asylum-Seekers by the Ministry of Social Affairs and the Defence Forces. The Committee is nevertheless concerned about the inadequate complaint mechanism existing for all places where persons are deprived of liberty and about insufficient oversight and monitoring of such places, as well as the small numbers of perpetrators of acts of torture or cruel, inhuman or degrading treatment or punishment convicted with appropriate sentences for the grave nature of the acts committed (arts. 12 and 13).

The State party should ensure that complaint mechanisms exist in all places where persons are deprived of liberty and that the oversight and monitoring of such places is adequate.

The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or other cruel, inhuman or degrading treatment or punishment, bring the responsible to justice and punish those convicted with sentences proportional to the gravity of their offence.

Inter-prisoner violence

(16) The Committee is concerned about inter-prisoner violence, especially with regard to the incidents that occurred in Murru prison in 2006 where two prisoners were killed, as well as with the insufficient measures taken to prevent and investigate such violence (arts. 12 and 13).

The State party should promptly, thoroughly and impartially investigate all deaths in detention and all violence amongst prisoners, including any cases involving possible negligence on the part of law enforcement personnel, and bring the responsible to justice, in order to fulfil its obligations under article 12 of the Convention.

Code of Criminal Procedure

(17) The Committee is concerned at the fact that, under the Code of Criminal Procedure, the court does not have the right to continue proceedings at its own discretion if prosecution drops charges (paragraph 64 of the State party report), and that prosecution may prolong pretrial detention after the initial period of six months without any justification (art. 13).

The State party should consider revising its Code of Criminal Procedure in order to regulate the powers of prosecution vis-à-vis the judiciary as well as to establish an obligation for prosecution to justify before the court any prolongation of the initial six months pretrial detention period.

Compensation and rehabilitation for victims

(18) While welcoming the increase in compensation to victims of certain crimes, the Committee remains concerned about the apparent absence of compensation for victims of torture and other cruel, inhuman or degrading treatment or punishment, as well as with the lack of appropriate measures for the rehabilitation of victims of torture, ill-treatment, trafficking, and domestic and sexual violence (art. 14).

The State party should ensure that adequate compensation is provided to victims of torture and other ill-treatment and that the means for as full rehabilitation as possible are also made available to all victims of torture and other ill-treatment, trafficking, and domestic and sexual violence.

Overcrowding and conditions of detention

(19) While welcoming the decrease in the prison population from approximately 4,800 detainees in 2001 to 3,600 in 2007, due to the introduction of various forms of expedited proceedings, which have ranged to 42 per cent of all criminal proceedings, and to alternative mechanisms of detention, the Committee remains concerned about the overall conditions of detention in the State party, including with regard to adequate HIV medical care (art. 16).

The State party should continue to alleviate the overcrowding of the penitentiary institutions and improve conditions of detention, especially in arrest houses where pretrial detainees are held for long periods in poor and inadequate conditions and should also continue its efforts to reduce the pretrial detention period.

The State party should provide adequate food to all detainees and improve the health and medical services in detention facilities, including by making available appropriate treatments, especially to HIV and tuberculosis infected detainees.

Trafficking in persons

(20) While welcoming awareness-raising and prevention campaigns and programmes (including the EQUAL EU cooperation project) as well as the National Plan of Action on trafficking in human beings, the Committee remains concerned about this persistent phenomenon and the absence of specific legislative measures to prevent, combat and punish human trafficking (art. 16).

The State party should reinforce its legislation and adopt other effective measures in order to adequately prevent, combat and punish human trafficking, especially that of women and children, and should promptly investigate, prosecute and punish all perpetrators of such crimes.

The State party should provide the Committee with statistical data on the incidence of trafficking as well as the objectives and results of the implemented measures, including investigations, prosecutions and convictions.

The State party should also adopt specific training and sensitization programmes for law enforcement personnel on human trafficking.

Domestic violence

(21) While noting the existence of several programmes and plans aimed at combating domestic violence, the Committee remains concerned about the incidence of such violence and the absence of specific legal measures to prevent and combat it (art. 16).

The State party should adopt a specific type of criminal offence for domestic violence, and provide protection for victims and their access to medical and legal services, including counselling services.

The State party should also promptly investigate, prosecute and punish all perpetrators of such violence and ensure adequate training to sensitize law enforcement personnel on domestic violence, including sexual violence and violence against children.

Stateless persons

(22) The Committee notes the concerns and recommendations of the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child. While welcoming the

reduction of statelessness in the State party, the Committee remains concerned at the fact that approximately 33 per cent of the prison population is composed of stateless persons, while they represent approximately 8 per cent of the overall population of the State party (art. 16).

The State party should adopt all adequate legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens.

The State party should also adopt the necessary measures to guarantee that stateless persons and non-citizens are informed of their rights in a language they understand and have access to the fundamental legal safeguards from the moment they are deprived of their liberty, without any discrimination.

The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (h) and (i)) that the State party should also address the causes and consequences of the disproportionate presence of stateless persons in the prison population and adopt the necessary measures to prevent this phenomenon.

The State party should further consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Brutality and excessive use of force by law enforcement personnel

(23) While welcoming the establishment of a complaints hotline operated by a non-governmental organization, the Committee remains concerned at allegations of brutality and excessive use of force by law enforcement personnel, especially with regard to the disturbances that occurred in Tallinn in April 2007, well documented by a detailed compilation of complaints (art. 16).

The State party should promptly, thoroughly and impartially investigate all acts of brutality and excessive use of force by law enforcement personnel and bring the perpetrators to justice.

The State party should also reinforce its training programmes for law enforcement personnel, especially for all special police forces, and encourage the State party to adopt the draft code of ethics for the police.

Psychiatric facilities

(24) While welcoming the improvement in the assistance of patients with psychiatric illnesses, including the implementation of the Mental Health Act into practice, the Committee is concerned about the general living conditions in psychiatric institutions and inadequate forms of treatment (art. 16).

The State party should improve the living conditions for patients in psychiatric institutions, ensure that all places where mental health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights, and that alternative forms of treatment, especially community-based treatment, are developed.

Data collection relevant to the implementation of the Convention

(25) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and penitentiary personnel, as well as on trafficking, domestic violence and sexual violence.

The State party should compile and provide to the Committee statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and other ill-treatment, trafficking,

domestic, sexual violence and ethnically motivated violence, violence against vulnerable groups, inter-prisoner and inter-patient violence, as well as on compensation and rehabilitation provided to the victims.

(26) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(27) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

(28) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(29) The Committee requests the State party to widely disseminate its report, together with the written answers to the Committee's questions and the conclusions and recommendations of the Committee, in all appropriate languages through official websites, the media and non-governmental organizations.

(30) The Committee requests the State party to provide, within one year, information on its response to the recommendations in paragraphs 10, 16, 20, 22 and 23 above.

(31) The State party is invited to submit its next report, which will be the fifth periodic report, by 30 December 2011.

34. Latvia

(1) The Committee considered the second periodic report of Latvia (CAT/C/38/Add.4) at its 788th and 790th meetings (CAT/C/SR.788 and 790), held on 8 and 9 November 2007, and adopted, at its 805th and 806th meetings (CAT/C/SR.805 and 806), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of Latvia and the information presented therein and expresses its appreciation for the replies by the State party to the follow-up procedure of the Committee. The Committee also expresses its appreciation at the State party's thorough responses to the list of issues in written form (CAT/C/LVA/Q/2/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken by the State party in order to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanation during the dialogue.

B. Positive aspects

(3) The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has acceded to or ratified a number of international instruments, including:

(a) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, on 22 February 2006;

(b) The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, on 19 December 2005;

(c) The Framework Convention for the Protection of National Minorities, on 6 June 2005; and

(d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 25 May 2004.

(4) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The Criminal Procedure Law which entered into force on 1 October 2005;

(b) The Law on the Procedure for Holding Apprehended Persons which entered into force on 21 October 2005;

(c) The Law on Procedure of Detention on Remand which entered into force on 18 July 2006;

(d) The amendments to the Medical Treatment Law which entered into force on 29 March 2007, introducing a procedure of judicial review of compulsory involuntary placement of patients in the psychiatric hospitals and their subsequent treatment;

(e) The establishment of the new Ombudsman institution on 1 January 2007, replacing the Latvian National Human Rights Office;

(f) The establishment of the State Legal Aid Administration in 2006 and the enactment on 17 March 2005 of the Law On State Guaranteed Free Legal Aid;

(g) The Concept on the Development of Penitentiaries which was adopted by the Cabinet's Decision No. 280 of 2 May 2005 to provide all inmates with treatment that would comply with the necessary standards;

(h) The adoption in 2004 of the State Programme on the Prevention of Trafficking in Human Beings (2004 2008); and

(i) The adoption on 5 December 2003 of the Professional Ethics and Conduct Code of the State Police Personnel.

C. Principal subjects of concern and recommendations

Definition of torture

(5) Notwithstanding the State party's assertion that, under the Latvian Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable, the Committee is concerned that the State party has not incorporated into domestic law the crime of torture as defined in article 1 of the Convention (arts. 1 and 4).

The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.

Ombudsman institution

(6) The Committee notes the establishment on 1 January 2007 of the new Ombudsman institution, replacing the former Latvian National Human Rights Office. While noting the broad mandate attributed to the Ombudsman institution and the increase in financial and human resources in 2007, the Committee is concerned that the financial and human resources remain insufficient to respond to the institution's expanded mandate and increasing workload (art. 2).

The State party should take appropriate measures to ensure the effective functioning of the Ombudsman institution, including the requisite human and financial resources. Furthermore, the State party is encouraged to seek accreditation with the International Coordinating Committee of National Human Rights Institutions to ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134 of 4 March 1994, including with regard to its independence.

Fundamental safeguards

(7) The Committee notes that the new Criminal Procedure Law includes a specific reference to fundamental legal safeguards for detainees, such as access to a defence counsel, but it regrets the lack of a specific reference to the right of access to a doctor. Furthermore, the Committee expresses its concern at reports that the right of effective access to a lawyer is not always realised in practice. In this respect, the Committee is concerned at reports of a shortage of state funded defence lawyers in several districts, especially rural areas, and that the working conditions provided for lawyers in detention and remand centres are not always satisfactory (arts. 2, 13 and 16).

The State party should take effective measures to ensure that all detainees are afforded fundamental legal safeguards in practice, including the right to have access to a lawyer and a doctor. The Committee emphasizes that persons in custody should benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty and throughout the investigation phase, the whole of the trial and during appeals. Furthermore, the State party should ensure that the lawyers are provided with proper working conditions in the detention and remand centres equivalent to the facilities available in prisons and finance the newly established Legal Assistance Agency.

Asylum-seekers

(8) While noting the amendment of the Asylum Law on 20 January 2005 with the deletion of the provision requiring the asylum application to be submitted in writing, the Committee regrets the lack of clarity on the total number of persons seeking asylum in the State party as well as the low asylum recognition rate. The Committee is also concerned at the detention policy applied to asylum seekers and at the short time limits, in particular for the submission of an appeal under the accelerated asylum procedure. Furthermore, the Committee notes that detained foreigners, including asylum seekers, have the right to contact the consular services of their respective country and are entitled to receive legal aid but it is concerned at information provided by the State party delegation that no asylum seekers have requested such legal aid (arts. 2, 3, 11 and 16).

The Committee recommends that the State party should:

(a) Take measures to ensure that detention of asylum seekers is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time;

(b) Ensure that anyone detained under immigration law has effective legal means of challenging the legality of administrative decisions to detain, deport or return (refouler) him/her and extend, in practice, the right to be assisted by assigned counsel to foreigners being detained with a view to their deportation or return (refoulement);

(c) Extend the time limits established under the accelerated asylum procedure, in particular in order to guarantee that persons whose applications for asylum have been rejected can lodge an effective appeal; and

(d) Provide, in the next periodic report, detailed and disaggregated statistics on the number of persons seeking asylum in the State party and the number of such persons in detention.

Furthermore, the State party is encouraged to promptly adopt the draft law on the Asylum in the Republic of Latvia which was formally approved during the session of the Committee of the Cabinet of Ministers on 26 March 2007 and is currently being examined in the Parliament.

Training

(9) The Committee notes with appreciation the detailed information provided by the State party on training for judges, including investigative and criminal judges, court staff, the personnel of the Imprisonment Facility Management Board (including medical personnel), employees of the Ministry of Health (including the personnel of psychiatric hospitals), public prosecutors, employees of the Ministry of Interior and its subordinate structures (including the State Police and the State Border Guard). However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on the impact of the training conducted for law enforcement officials, prison staff and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop educational programmes to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians and that the Manual is translated into the Latvian language. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Detention on remand, including pretrial detention

(10) While noting the new Criminal Procedure Law, which reduces the apprehension phase from 72 to 48 hours and introduces the system of an investigative judge who shall decide on the application of detention on remand as well as reports that the duration of detention on remand has been reduced, the Committee remains concerned at reports of prolonged periods of detention on remand, including pretrial detention, and the high risk of ill-treatment which it entails and regrets the lack of use of alternatives to imprisonment. While noting the Law on the Procedure of Holding Detainees which requires the procedure of holding criminal suspects in police short-term detention cells and sets standards for conditions of detention in these cells, the Committee is concerned at information that this does not apply to cells in small police stations where detainees can be held up to 12 hours (arts. 2, 11 and 16).

The State party should take appropriate measures to further reduce the duration of detention in custody and detention before charges are brought, and develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.

(11) The Committee notes a number of initiatives taken by the State party to improve the conditions of detention for persons under the age of 18, including in the juvenile correctional facilities, such as the establishment of the Ministry of Children and Family Affairs and the State Children Rights Protection Inspectorate under its auspices to monitor the regime and conditions of juvenile detention as well as the adoption of the Basic Policy Guidelines for the Enforcement of Prisons Sentences and Detention of Juveniles for 2007-2013. However, the Committee expresses its concern at reports that juveniles are often held in pretrial detention for prolonged periods and at the high percentage of juveniles remanded in custody (arts. 2, 11 and 16).

The State party should increase its efforts to bring its legislation and practice as regards the arrest and detention of juvenile offenders fully in line with internationally adopted principles, including by:

(a) Ensuring that deprivation of liberty, including pretrial detention, should be the exception, to be used only as a last resort and for the shortest time possible;

(b) Developing and implementing alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences;

(c) Adopting an action plan based on the Basic Policy Guidelines and ensuring the necessary resources for its effective implementation and follow up; and

(d) Taking further measures to improve the living conditions in detention facilities, elaborating more contemporary and modern programmes aimed at re socialisation, and ensuring training of prison personnel to raise their professional qualification in light of their work with juveniles.

Conditions of detention

(12) The Committee is concerned that, notwithstanding the measures taken by the State party to improve conditions of detention, including the adoption of the 2005 Concept on the Development of Penitentiaries and the establishment of the new Olaine Prison Hospital on 1 August 2007, there is continuing overcrowding in prisons. The Committee takes note of information provided on the improvement of conditions in some detention facilities and prisons but is concerned at the overall conditions of detention, including unsuitable infrastructures and unhygienic living conditions, in other prisons, remand centres and police short-term detention cells. The significant increase in the number of applications lodged with the Latvian National Human Rights Office (now the Ombudsman institution), including alleged violations of the right to human treatment and respect for human dignity (alternatively treatment in places of deprivation of liberty) in different kind of institutions, including closed institutions, is also a matter of concern. Additionally, the Committee is concerned at the occurrence of inter-prisoner violence and lack of statistical data that may provide breakdown by relevant indicators to facilitate determination of root causes and design of strategies to prevent and reduce such occurrences (arts. 11 and 16).

The Committee recommends that the State party should:

(a) Continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities in the context of the Concept on the Development of Penitentiaries;

(b) Take effective measures to further improve living conditions in the detention facilities, including prisons and police short term detention cells; and

(c) Monitor and document incidents of inter prisoner violence with a view to revealing root causes and designing appropriate prevention strategies and provide the Committee with such data, disaggregated by relevant indicators, in the next periodic report.

Furthermore, the Committee encourages the Ministry of Justice to proceed with the drafting of the Standards of the Places of Deprivation of Liberty.

(13) While noting the elaboration and implementation of the 2005 guidelines for the prison personnel providing instructions for the treatment of persons at risk of committing suicide, the Committee is concerned at the high number of suicides and other sudden deaths in detention facilities (arts. 11 and 16).

The State party should strengthen its efforts to prevent suicide and self harm risks in custody. The State party is encouraged to adopt a suicide prevention policy for prisons, including screening, reporting, data collection, training and education and establish social rehabilitation units for prisoners as indicated in the training seminar on "Suicide Prevention in Prisons" on 18 May 2005. The State party should also ensure that all incidents of suicide and other sudden death are promptly and effectively investigated.

Independent monitoring

(14) The Committee notes information provided on state-guaranteed and non-governmental organization-based monitoring of places, where personal liberty is being limited and that article 13, paragraph 3 of the Ombudsman

Law provides the right "at any time and without a special permit to visit closed-type institutions, to move freely within the territory of the institutions, to visit all premises and to meet in private the persons held in closed-type institutions". However, the Committee is concerned at the lack of systematic and effective monitoring of all places of detention and reiterates its concern noted in paragraph 6 on the insufficient resources allocated to the Ombudsman institution. The Committee is also concerned at the lack of a comprehensive listing of all places of detention, including those of aliens (arts. 2, 11 and 16).

The State party should take the necessary measures to effectively and systematically monitor all places of detention. The Committee recommends that the State party develop a comprehensive listing of all places of detention, including places of detention of aliens, and establish a central register of inmates or, alternatively, finalize the development of a common database to be used by the Imprisonment Facility Management Board and the State Probation Service which will allow tracking down every detainee and/or convicted prisoner within the penitentiary system, as well as within the probation system.

Conditions in psychiatric institutions and hospitals

(15) The Committee notes the recent amendments to the Medical Treatment Law, introducing the procedure of judicial review of compulsory involuntary placement of patients in the psychiatric hospitals and their subsequent treatment, and the establishment of a new modern ambulatory mental assistance centre in Riga. However, the Committee remains concerned at conditions in psychiatric institutions and hospitals, including the use of physical restraints and isolation (arts. 11 and 16).

The State party should review the use of physical restraints, consider establishing guidelines on the use of such restraints and limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. The State party is encouraged to promptly adopt the draft Programme on Improvement of the Mental Health of the Population for 2008-2013.

Use of force and ill-treatment

(16) The Committee expresses its concern at the high number of allegations of use of force and ill-treatment by law enforcement officials, especially in the course of or in relation to apprehension, and the low number of convictions in such cases. The Committee is also concerned that officials accused of torture and ill-treatment seems to be given disciplinary sanctions or warnings and it regrets the lack of a separate account of such disciplinary sanctions (arts. 12 and 16).

The State party should take effective measures to send a clear and unambiguous message to all levels of the police force hierarchy that torture, use of force and ill-treatment are unacceptable, including through the enforcement of the 2003 Professional Ethics and Conduct Code of the State Police Personnel, and ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty. Referring to article 4, paragraph 2 of the Convention, the Committee underlines that the State party should apply sanctions that are proportional with the offences, and the State party is encouraged to initiate the collection of statistics on disciplinary penalties imposed.

Prompt and impartial investigations

(17) The Committee, while noting that several complaints bodies are mandated to review individual complaints about police misconduct, is concerned at the number of complaints of physical use of force and ill-treatment by law enforcement officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated The Committee also notes with concern that the offence of torture, which as such does not exist in the Latvian Criminal Code but rather is punishable under other provisions of the Criminal Code, might in some cases be subject to a statute of limitations. The Committee is of the view that acts of torture cannot be subject to any statute of limitations (arts. 1, 4, 12 and 16).

The Committee recommends that the State party should:

(a) Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention; and

(c) Review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Compensation and rehabilitation

(18) While noting information on treatment and social rehabilitation services provided to, inter alia, detainees and child victims of violence, the Committee regrets the lack of a specific programme to safeguard the rights of victims of torture and ill-treatment. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (art. 14).

The State party should strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should develop a specific programme of assistance in respect of victims of torture and ill-treatment. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

Rights of vulnerable groups and discrimination

(19) While noting a number of measures adopted by the State party, including the recent amendment in article 48 of the Criminal Law to include racial motivation as an aggravating factor for criminal liability, the Committee expresses its concern at report of acts of violence against and discrimination of vulnerable groups, including the Roma and the lesbian, gay, bisexual and transgender (LGBT) community. The Committee is concerned at reports that the number of allegedly racially motivated crimes has recently increased and that the number of reported hate crimes is underestimated due to the lack of an effective hate crime recording and monitoring system. Furthermore, while the Committee takes note of the efforts made by the State party in recent years in the process of naturalisation, it remains concerned at the continued existence of the status of non-citizens and stateless persons, affecting a large group in Latvian society (art. 16).

The State party should intensify its efforts to combat discrimination against and ill-treatment of vulnerable groups, in particular the Roma and the LGBT community, including through the strict application of relevant legislation and regulations providing for sanctions. The State party should ensure prompt, impartial and thorough investigations into all such motivated acts and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts and ensure adequate training and instructions for law enforcement bodies and sensitization of the judiciary. The State party is encouraged to adopt the draft National Programme to Facilitate Tolerance and to provide detailed information in its next periodic report on the effective measures adopted to prevent and combat such acts. The State party should simplify and facilitate the naturalization process and integration of non-citizens and stateless persons.

Domestic violence

(20) The Committee, while noting various measures undertaken by the State party, including the Action Plan for 2004-2013 of the State Family Policy Document, expresses its concern about the persistence of violence against women and children, including domestic violence. It is also concerned that domestic violence is not defined in national legislation and that marital rape is not recognized as a specific crime. The Committee further regrets the lack of state-wide statistics on domestic violence and to this effect statistical data on complaints, prosecutions and sentences in matters of domestic violence were not provided. While noting the existence of some assistance programmes, including in the areas of rehabilitation and legal assistance, these are mostly run by non-governmental organizations and supported by outside donors, the Committee regrets the lack of direct State involvement in such programmes (arts. 1, 2, 12 and 16).

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence. The State party should, inter alia, include a definition of domestic violence in its Criminal Code and recognize marital rape as a specific crime. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (law-enforcement agencies, judges, law officers and welfare workers) who are in direct contact with the victims. The State party is also encouraged to adopt the draft Programme on Gender Equality for 2007-2010 as announced by the Ministry of Welfare on 26 April 2007 and to elaborate an action plan to prevent sexual and gender-related criminal offences.

Trafficking

(21) While recognizing the existence of legislative and other measures to address sexual exploitation and trafficking in women and children, including the State Programme for Elimination of Trafficking in Human Beings (2004-2008), the Committee is concerned about persistent reports of cross-border trafficking in women for sexual and other exploitative purposes. The Committee notes the information provided on social rehabilitation for victims of trafficking, including the provision of state-financed social rehabilitation, but regrets the lack of information on training of law enforcement personnel and other relevant groups (arts. 2, 10 and 16).

The State party should continue to take effective measures to prosecute and punish trafficking in persons, including through the strict application of relevant legislation. The State party should conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.

Data collection

(22) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking and domestic and sexual violence. The Committee also regrets the lack of statistics in respect of asylum seekers and non-citizens as well as inter-prisoner violence. However, the Committee takes note of the establishment in August 2007 by an order of the State Police of the Statistics and Analysis Unit of the Internal Security Bureau of State Police tasked, inter alia, to analyze statistics on the offences committed by the police officers (arts. 12 and 13).

The State party should establish an effective system to gather all statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as on compensation and rehabilitation provided to the victims. The Committee recognizes the sensitive implications of gathering personal data and emphasizes that appropriate measures should be taken to ensure that such data collection is not abused.

(23) The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(24) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

(25) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(26) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(27) The State party is encouraged to disseminate widely the reports submitted by Latvia to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8, 11, 17 above.

(29) The State party is invited to submit its next periodic report, which will be considered as the fifth periodic report, by 30 December 2011.

35. Norway

(1) The Committee considered the fifth periodic report of Norway (CAT/C/81/Add.4) at its 791st and 794th meetings, held on 12 and 13 November 2007 (CAT/C/SR.791 and 794), and adopted, at its 804th meeting on 20 November 2007 (CAT/C/SR.804), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the State party's fifth periodic report, which was prepared in accordance with the Committee's guidelines and submitted on time. The Committee commends the comprehensive written responses provided to the list of issues (CAT/C/NOR/Q/5/Add.1) and appreciates the fruitful and constructive dialogue with the State party's multisectoral delegation.

B. Positive aspects

(3) The Committee commends the State party for its compliance with its obligations under the Convention and for its ongoing efforts to prevent and eliminate any acts or conduct contrary to its provisions. In particular, the Committee notes with satisfaction:

(a) The incorporation of a new provision in the Penal Code that prohibits and penalizes torture, in conformity with article 1 of the Convention;

(b) The adoption of an amendment to the Criminal Procedure Act to reduce the overall use of pretrial solitary confinement and to strengthen its judicial supervision, as well as the abolition of solitary confinement as a sanction, in accordance with the new Act on Execution of Sentences and its implementing regulations;

(c) The recent adoption of legislative measures to regulate the rights of persons staying at the Trandum Alien Holding Centre in accordance with the revised UNHCR Guidelines on Applicable Criteria and Standards for the Detention of Asylum Seekers;

(d) The establishment of a new central unit for the investigation of alleged crimes by members of the police, with authority to initiate prosecutions, and the allocation of additional resources to the investigation of reports of crime committed by the police;

(e) The measures taken to ensure that the Committee's concluding observations are promptly translated into Norwegian and distributed more widely, including through publication on the website of the Ministry for Foreign Affairs;

(f) The State party's regular donations to the United Nations Voluntary Fund for the Victims of Torture since its establishment; as well as bilateral cooperation and development assistance aimed at the combat of torture.

C. Principal subjects of concern and recommendations

Incorporation of the Convention

(4) The Committee, while noting the State party's explanation with regard to its general principles concerning the transformation of its international obligations into national law and the reasons for incorporating only the most general international instruments in its Human Rights Act, nevertheless regrets that the State party has not changed its position with regard to the specific incorporation of the Convention into Norwegian law.

The State party should further consider incorporating the Convention into domestic law in order to allow persons to invoke the Convention directly in the courts, to give prominence to the Convention and to raise awareness of the provisions of the Convention among members of the judiciary and the public at large.

Definition of torture

(5) The Committee, while noting with appreciation the incorporation of a new provision prohibiting and penalizing torture in the Penal Code, notes that the wording of the definition of torture in the Penal Code, in contrast to the definition in article 1 of the Convention, enumerates specific forms of discrimination as possible motives rather than referring to all types of discrimination.

The State party should further consider the possible use of wording similar to that used in the Convention so as to ensure that the definition of torture comprises all types of discrimination as possible motives.

Non-refoulement

(6) The Committee notes the existence of a so-called "48-hour procedure" for the rejection of asylum-seekers from countries generally regarded as safe and whose application is assessed as manifestly unfounded after an asylum interview.

The State party should ensure that a genuine consideration of each individual case can still be provided for under the "48-hour procedure" and keep under constant review the situation in those countries in respect of which that procedure is applied.

(7) With regard to the State party's participation in the International Security Assistance Force (ISAF) operation in Afghanistan, the Committee notes the State party's explanation that any Afghan citizen apprehended by Norwegian ISAF personnel is handed over to the Afghan authorities in accordance with a Memorandum of Understanding obliging the Afghan Government to comply with relevant international standards in the treatment of any persons thus transferred.

In accordance with the Committee's constant view (see CAT/C/CR/33/3, paras. 4 (b), 4 (d), 5 (e) and 5 (f) and CAT/C/USA/CO/2, paras. 20 and 21) that article 3 of the Convention and its obligation of non-refoulement apply to a State party's military forces, wherever situated, where they exercise effective control over an individual, the State party should continue to closely monitor the compliance by the Afghan authorities with their relevant obligations in relation to the continued detention of any persons handed over by Norwegian military personnel.

Pretrial detention and treatment of persons otherwise detained or at the disposal of the authorities

(8) The Committee, while noting the amendment of legislation to reduce the length of pretrial detention and the use of solitary confinement as a preventative measure, remains concerned at the lack of adequate statistics validating the effectiveness of these measures.

The State party should compile detailed statistics on the application of pretrial detention and the use of solitary confinement so as to verify the effectiveness of recent amendments to its relevant legislation in practice. The State party should also compile statistics relating to the application of recent amendments to the Immigration Act concerning the detention of foreign nationals.

(9) The Committee, while welcoming the recent adoption of a legislative act to regulate the rights of persons staying at the Trandum Alien Holding Centre, notes that the supervisory board which will supervise the operation of the Centre in accordance with that act has yet to be established.

The State party should establish the supervisory board for the Trandum Holding Centre envisaged in recent legislation forthwith so as to ensure that the rights of persons held at the Centre are respected at all times.

(10) The Committee, while noting that measures have been taken to address recent incidents of excessive use of force by the police, remains concerned about reports on the use of unnecessary force in some instances, and about reports of discriminatory treatment based on ethnicity.

The State party should ensure that all appropriate measures are taken to counter the possible persistence of practices involving the use of unnecessary force by the police, and the risks posed by any discriminatory treatment in this regard.

Education on the prohibition against torture

(11) While noting that different training programmes for police and prison officers which cover human rights and rights of detainees, including the prohibition of torture, are systematically held, the Committee regrets that there is no available information on the impact of the training on reducing incidents of violence and ill-treatment, including incidents that may be racially motivated.

The State party should ensure that through educational programmes, law enforcement personnel and justice officials are fully aware of the provisions of the Convention, applicable limitations on the use of force and the need to avoid any discriminatory treatment. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of relevant training programmes on the incidence of cases of torture, violence and ill-treatment.

Prompt and impartial investigations

(12) The Committee notes that the State party has taken measures to further improve the handling of complaints against the police and the investigation of relevant allegations. Nevertheless, the Committee remains concerned about allegations concerning violations committed by law enforcement officials, including allegations relating to discriminatory treatment, and about the impartiality of subsequent investigations.

The State party should closely monitor the effectiveness of the new procedures for the investigation of alleged crimes committed by law enforcement officials, in particular those in which discriminatory treatment based on ethnicity is alleged. The State party is requested to provide detailed information on the results of the ongoing review process in its next periodic report.

Provisional measures

(13) In light of a recent case in which the State party's initial response to a request by the Committee for provisional measures was unfavourable, the Committee is concerned about the State party's general position with regard to requests for provisional measures by the Committee.

The State party should consider its position with regard to interim measures requested by the Committee in light of article 22 of the Convention and the principle of good faith, with a view to generally allowing the Committee sufficient time to consider any case that may arise in the future before any action is taken.

(14) The Committee notes the State party's assurance that measures are being undertaken to seek the ratification of the Optional Protocol to the Convention, and encourages the State party to proceed to ratify the Protocol at the earliest possible date.

(15) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

(16) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.[1]

(17) The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations, through official websites, the media and non-governmental organizations.

(18) The Committee requests the State party to provide, within one year, information on its response to the recommendations contained in paragraphs 6, 7, 8 and 9 above.

(19) The Committee, having concluded that during the consideration of the report of the State party, sufficient information was presented to cover the period of delay in submitting the fifth report, decided to request the seventh periodic report by 30 December 2011.

36. Portugal

(1) The Committee considered the fourth periodic report of Portugal (CAT/C/67/Add.6) at its 795th and 798th meetings, held on 14 and 15 November 2007 (CAT/C/SR.795 and 798), and adopted at its 805th meeting on 21 November 2007 (CAT/C/SR.805) the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the fourth periodic report of Portugal, the exhaustive written replies to the list of issues and the extremely detailed additional oral replies given during the consideration of the report. Lastly, the Committee welcomes the constructive dialogue with the high-level delegation sent by the State party and thanks it for the frank and precise replies to the questions raised (CAT/C/PRT/Q/4/Add.1).

B. Positive aspects

(3) The Committee commends the State party on its progress in the protection and promotion of human rights since the consideration in 2000 of the third periodic report (CAT/C/44/Add.7).

(4) The Committee welcomes the entry into force of the following legislation:

(a) Act No. 23/2007 of 4 July 2007, according to which foreign nationals may not be deported to a country where they would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment;

(b) Act No. 59/2007 of 4 September 2007 approving the new Penal Code and Act No. 48/2007 of 29 August 2007 approving the new Code of Criminal Procedure;

(c) Act No. 63/2007 of 6 November 2007 approving the restructuring of the National Republican Guard (GNR), as announced by the State party's delegation.

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[1] The wording of this paragraph reflects the changes contained in CAT/C/NOR/CO/5/Corr.1.

(5) The Committee also welcomes the following measures:

(a) The creation in 2000 of the Inspectorate-General for Justice Services;

(b) The establishment of the Police Code of Ethics approved by resolution No. 37/2002 of the Council of Ministers on 28 February 2002; and

(c) The dissemination of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") through the translation of the United Nations Fact Sheets into Portuguese.

C. Subjects of concern and recommendations

Definition of torture

(6) While taking note of the explanations given by the State party delegation that discrimination is illegal under article 240 of the new Penal Code, the Committee is nonetheless concerned that the definition of torture contained in article 243 of the Penal Code does not include discrimination among the motives for acts of torture and, consequently, does not appear to cover every possible motive for torture as defined under article 1 of the Convention.

The State party should consider making the necessary amendments to article 243 of the Penal Code to include discrimination as a possible motive for acts of torture as defined under article 1 of the Convention.

Arrest for identification purposes

(7) While noting that, according to the Portuguese delegation, arrests for identification purposes are exceptional, the Committee regrets such a procedure exists, since it could lead to group arrests being made under certain circumstances. The Committee is concerned that time spent in custody for identification purposes (6 hours maximum) is not deducted from the total period of custody which may follow (48 hours). The Committee is also concerned that Portuguese legislation contains no provision explicitly requiring the Public Prosecutor's Office to order a forensic report in all cases where it has knowledge of the ill-treatment of a person held in custody (art. 2).

The State party should take adequate measures to:

(a) Ensure that all arrests, including arrests for identification purposes, are not targeted at groups of persons but that arrests are made on an individual basis;

(b) Guarantee that the time spent in custody for identification purposes (6 hours maximum) is deducted from the total period of custody, if applicable (48 hours); and

(c) Include in its legislation a provision explicitly requiring the Public Prosecutor's Office to order a forensic report in all cases where it has knowledge of a situation of ill-treatment of a person held in custody.

Pretrial detention

(8) While taking note of the explanations given by the Portuguese delegation, in particular its reference to article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), the Committee is concerned by the State party's definition of pretrial detention which encompasses not only detention of persons awaiting trial but also of persons tried in first instance whose sentence has not yet been confirmed or quashed by a court of appeal. Such language is liable to cause confusion regarding the actual duration of pretrial detention as it is understood by the Committee and the number of detainees awaiting trial (arts. 2 and 16).

The State party should envisage taking the necessary measures to distinguish pretrial detention from detention of persons who have been tried in a court of first instance and have appealed against their sentence, in order to avoid any confusion which could lead the Committee to believe that the Convention has been violated.

Detention incommunicado

(9) While welcoming the fact that detainees can no longer be held incommunicado, totally or relatively, during pretrial detention, the Committee notes that under article 143 (4) of the new Code of Criminal Procedure, in cases of terrorism or violent or highly organized crime, the Public Prosecutor's Office can order that detainees be held totally incommunicado - excepting their access to legal counsel - until such time as they are brought before the courts (art. 2).

The State party should ensure that detention incommunicado prior to appearance in court in cases of terrorism or organized violence is explicitly and strictly regulated by law and subject to stringent judicial supervision.

Universal jurisdiction

(10) While acknowledging with satisfaction that article 5 of the new Penal Code permits the State party to exercise universal jurisdiction in respect of acts of torture committed outside its territory, the Committee notes with concern that such jurisdiction is exercised by the Attorney-General, whose Office, although autonomous, is connected with the Executive branch (art. 5).

The State party should consider entrusting the exercise of universal jurisdiction in respect of serious violations of international law to an independent tribunal.

Prison conditions

(11) The Committee welcomes the reform of prison legislation reported by the Portuguese delegation which is designed to bring the law on the enforcement of sentences into conformity with the European Prison Rules. It also notes the substantial improvement in prison occupancy rates and the efforts made in the area of health care. The Committee remains concerned, however, about reports of continuing violence among inmates, including sexual violence, and about the persistently high number of deaths in detention, largely attributable to HIV/AIDS and suicide. The Committee is also troubled by reports of torture and cruel, inhuman or degrading treatment in penitentiary establishments, for instance the case of Mr. Albino Libânio, who allegedly suffered multiple injuries from a beating in 2003 (arts. 11 and 16).

The State party should continue its efforts to improve prison conditions, in particular by maintaining an appropriate prison occupancy rate. It should also step up measures aimed at preventing violence among inmates, including sexual violence, and suicide by prisoners.

The State party should, furthermore, take the necessary steps to ensure that the physical and psychological integrity of prisoners is respected under all circumstances.

Prompt and impartial investigations and redress

(12) The Committee is concerned that article 4 of Act No. 21/2000 of 10 August 2000 does not include torture among the 30 crimes listed in the Act for which the judicial police is solely responsible, since this could impede the initiation of prompt and impartial investigations of alleged cases of torture in the territory of the State party (arts. 12 and 14).

The State party should take appropriate steps to include torture in the list of crimes for which the judicial police is solely responsible and ensure that a prompt and impartial investigation is initiated in all cases where there are grounds for believing that an act of torture has been committed in any territory under its jurisdiction.

It should also ensure that the alleged perpetrators of such acts are brought to justice and, if found guilty, given appropriate sentences and that the victims obtain adequate redress, including the means for their physical and psychological rehabilitation.

(13) The Committee takes note of the restructuring of the various police forces, including the Public Security Police (PSP) and the National Republican Guard (GNR), and the report that the use of firearms by the GNR during vehicle pursuits has been prohibited since 2005 "except in cases expressly provided for by law" (CAT/C/67/Add.6, para. 117). It is nonetheless concerned by reports of excessive use of force by the police allegedly involving gunshot injuries, threats at gunpoint, abuse of power and, in one case, death (arts. 11, 12 and 14).

The State party should continue its efforts to raise awareness among the police forces with respect to compliance with the provisions of the Convention by means of ongoing and targeted training. Furthermore, it should ensure that any complaints made against the police forces for acts of torture or cruel, inhuman or degrading treatment are immediately investigated, that the alleged perpetrators are prosecuted and that the victims are given appropriate compensation.

Use of "TaserX26" weapons

(14) The Committee is deeply concerned about the recent purchase by the State party of electric "TaserX26" weapons for distribution to the Lisbon Metropolitan Command, the Direct Action Corps, the Special Operations Group and the Personal Security Corps. The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death, as recent developments have shown (arts. 1 and 16).

The State party should consider relinquishing the use of electric "TaserX26" weapons, the impact of which on the physical and mental state of targeted persons would appear to violate articles 1 and 16 of the Convention.

Domestic violence, particularly against women and children

(15) The Committee is concerned about reports received of numerous cases of domestic violence affecting women and children, as well as a high number of deaths among women due to such violence. Moreover, the Committee is deeply concerned at the Supreme Court decision of 5 April 2006, according to which "moderate corporal punishment of a minor by a duly entitled person for solely appropriate educational purposes is not illegal" in the family context (art. 16).

The State party should strengthen its efforts to establish a national strategy to prevent and combat domestic violence against women and children. It should take the necessary legislative measures to prohibit corporal punishment of children in the family. The State party should: guarantee that women and children who have been victims of violence have access to complaints mechanisms; punish the perpetrators of these acts in an appropriate manner; and facilitate the physical and psychological rehabilitation of the victims.

The State party should also ensure that public law enforcement agents receive ongoing and targeted training on the issue of violence against women and children.

Human trafficking, including of residents in Portugal

(16) The Committee notes with satisfaction that, under Act No. 23/2007 of 4 July 2007, victims of human trafficking can obtain residence permits, and welcomes the awareness-raising campaign launched by the State party to combat this problem. The Committee is, nonetheless, concerned about the extent of human trafficking, which affects a very high number of women, for the purposes of economic and sexual exploitation (art. 16).

The State party should continue its efforts to combat human trafficking and should adopt the necessary measures to punish the perpetrators with appropriate penalties.

Discrimination

(17) The Committee notes that article 240 of the new Penal Code, concerning non-discrimination, now covers not only discrimination based on race, colour, ethnic or national origin and religion, but also discrimination based on sex and sexual orientation. It is nonetheless concerned by reports of numerous acts of violence of a discriminatory nature directed against certain minorities. The Committee is also concerned that the membership of the police forces does not reflect the diversity of minorities present in Portugal (art. 16).

The State party should take the necessary measures to effectively combat acts of violence based on any form of discrimination and to punish the perpetrators appropriately. The State party should also strive to include representatives of minorities residing in its territory in the police forces.

(18) The State party is encouraged to consider ratifying the Optional Protocol to the Convention.

(19) The Committee invites the State party to ratify the major United Nations treaties on human rights to which it is not yet party.

(20) The State party is encouraged to disseminate widely the reports submitted by Portugal to the Committee and the Committee's conclusions and recommendations, in the national language, through official websites, the media and non-governmental organizations. The State party is also encouraged to circulate its reports to national non-governmental human rights organizations before submitting them to the Committee.

(21) The Committee invites the State party to submit its core document in accordance with the requirements concerning the common core document contained in the harmonized guidelines on reporting, adopted by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(22) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations as contained in paragraphs 11 to 14 above.

(23) The Committee, having concluded that, during the consideration of the report of the State party, a sufficient amount of information was adduced to cover the period of the delay in submitting its fourth periodic report, decided to request that the sixth periodic report should be submitted by 30 December 2011.

37. Uzbekistan

(1) The Committee considered the third periodic report of Uzbekistan (CAT/C/UZB/3) at its 789th and 792nd meetings (CAT/C/SR.789 and 792), held on 9 and 12 October 2007, and adopted, at its 807th and 808th meetings, held on 22 November 2007 (CAT/C/SR.807 and 808), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the third periodic report of Uzbekistan and the extensive responses to the list of issues (CAT/C/UZB/Q/3/Add.1) by the State party and the representatives who participated in the oral review.

B. Positive aspects

(3) The Committee welcomes the following developments, including the following administrative, legislative and other measures taken:

(a) Scheduled introduction of habeas corpus provisions beginning 1 January 2008;

(b) Adoption of the law to abolish the death penalty beginning 1 January 2008;

(c) Amendment to article 235 of the Criminal Code, addressing some of the elements in the definition of torture;

(d) Transfer of the authority to issue arrests warrants from the prosecutor's office to the courts (8 August 2005);

(e) Order No. 40, which instructs prosecutors to apply the provisions under the Convention and applicable national laws directly;

(f) The Supreme Court's directives to prohibit the introduction of evidence, including testimonies, obtained under torture, resulting in courts referring "numerous criminal cases back for further investigation after evidence had been found inadmissible";

(g) Steps to implement the Plan of Action of 9 March 2004 on the adoption of the recommendations of the Committee against Torture (CAT/C/CR/28/7) following consideration of the second periodic report, and the information provided by the delegation of the State party that a similar plan will be adopted to continue efforts to realize the present concluding observations;

(h) Increase in the number of registered complaints of torture to the Ministry of Internal Affairs by 57 per cent, which according to the State party "is a sign of increased confidence in the internal affairs authorities";

(i) Preparation and distribution to all detainees of a pamphlet prepared jointly with the American Bar Association to inform detainees of their rights;

(j) Reduction in crowding of prisoners in places of detention.

(4) The Committee also notes the following:

(a) Ratification of the United Nations Convention against Transnational Organized Crime; and

(b) Ratification of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

C. Main subjects of concerns and recommendations

Prosecution of torture as an offence

(5) While the Committee acknowledges the efforts made to amend legislation to incorporate the definition of torture of the Convention into domestic law, it remains concerned that in particular the definition in the amended article 235 of the Criminal Code restricts the prohibited practice of torture to the actions of law enforcement officials and does not cover acts by "other persons acting in an official capacity", including those acts that result from instigation, consent or acquiescence of a public official and as such does not contain all the elements of article 1 of the Convention.

The Committee reiterates its previous recommendation that the State party take measures to adopt a definition of torture so that all the elements contained in article 1 of the Convention are included. The State party should ensure that persons who are not law enforcement officials but who act in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture and not merely, as stated, charged with "aiding and abetting" such practices.

Widespread torture and ill-treatment

(6) The Committee is concerned about:

(a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;

(b) Credible reports that such acts commonly occur before formal charges are made, and during pretrial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;

(c) The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention; and

(d) Allegations that persons held as witnesses are also subjected to intimidation and coercive interrogation and in some cases reprisals.

The State party should apply a zero-tolerance approach to the continuing problem of torture, and to the practice of impunity. The State party should:

(a) Publicly and unambiguously condemn practices of torture in all its forms, directing this in particular to police and prison staff, accompanied by a clear warning that any person committing such acts, or otherwise complicit or participating in torture be held personally responsible before the law for such acts and subject to criminal penalties;

(b) Immediately adopt measures to ensure in practice prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those responsible, including law enforcement officials and others. Such investigations should be undertaken by a fully independent body;

(c) Bring all suspected perpetrators to justice in order to eliminate impunity for law enforcement officials and others responsible for breaches of the Convention; and

(d) Ensure in practice that complainants and witnesses are protected against any ill-treatment or intimidation as a consequence of his/her complaint or any evidence given.

(7) The Committee is also concerned at the numerous allegations of excessive use of force and ill-treatment by Uzbek military and security forces in the May 2005 events at Andijan which resulted, according to the State party, in 187 deaths and according to other sources, 700 or more, and in hundreds of others being detained thereafter. Notwithstanding the State party's persistent response to all allegations that the measures taken were in fact appropriate, the Committee notes with concern the State party's failure to conduct full and effective investigations into all claims of excessive force by officials.

(8) The Committee is further concerned that the State party has limited and obstructed independent monitoring of human rights in the aftermath of these events, thereby further impairing the ability to obtain a reliable or credible assessment of the reported abuses, including ascertaining information on the whereabouts and reported torture or ill-treatment of persons detained and/or missing.

(9) The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention. The Committee notes that the State party has not agreed to requests made to set up an independent international commission of inquiry into these events, as requested by the High Commissioner for Human Rights, endorsed by the Secretary-General and reiterated by the Committee on the Rights of the Child.

The State party should take effective measures:

(a) To institute a full, effective, impartial inquiry into the May 2005 events at Andijan in order to ensure that individuals can lodge complaints and all persons responsible for violations of the Convention are investigated and brought to justice. In accordance with the recommendation of the High Commissioner for Human Rights and others, the Committee recommends that credible, independent experts conduct this inquiry in order to examine all information thoroughly and reach conclusions as to the facts and measures taken;

(b) To provide information to family members on the whereabouts and charges against all persons arrested or detained in connection with the Andijan events; and

(c) To ensure that military and security officials only use force when strictly necessary and that any acting in violation of the Convention are subject to review.

(10) The Committee is disappointed that most of the small number of persons whose cases were pursued by the State party received mainly disciplinary penalties. The Committee is also concerned that sentences of those convicted under article 235 of the Criminal Code are not commensurate with the gravity of the offence of torture as required by the Convention.

The State party should immediately adopt measures to ensure that punishment for acts of torture are at a level commensurate with the severity of the crime, in accordance with the requirements of the Convention. Suspected perpetrators should as a rule be subject to suspension or reassignment during the process of investigation. These subjected to disciplinary penalties should not be permitted to remain at their posts.

Conditions of detention

(11) While the Committee appreciates the information from the State party regarding surveys of detainees' opinions regarding detention facilities, the Committee remains concerned that despite the reported improvements, there are numerous reports of abuses in custody and many deaths, some of which are alleged to have followed torture or ill-treatment. Furthermore, only some of these have been followed by independent autopsies, and such investigations have not become a regular practice. The Committee is also aware of the concerns raised by the Special Rapporteur on torture regarding the Jaslyk detention facility, the isolated location of which creates conditions of detention reportedly amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives.

The State party should take effective measures to keep under systematic review all places of detention, and not to impede routine unannounced visits by independent experts, including independent national and international bodies, to all places of detention, including Jaslyk prison.

The State party should take prompt measures to ensure that in all instances of death in custody, it independently investigates and prosecutes those believed responsible for any deaths resulting from torture, ill-treatment or wilful negligence leading to any of these deaths. The Committee would appreciate a report on the outcome of the investigations, where completed, and where cases of torture were indeed found, as well as information about what penalties and remedies were provided. The State party should correct the reportedly poor conditions of places of detention, including through the application of alternative measures to imprisonment and the establishment of additional prison facilities, as needed.

Safeguards for prisoners

(12) Notwithstanding the many fundamental legislative changes made by the State party regarding detention conditions, safeguards of detainees and related matters, the Committee is concerned at credible reports that law enforcement personnel secure and follow detailed internal regulations and procedures that are restricted for official use only and not made public or available to detainees or their lawyers. These rules leave many issues to the discretion of the officials. This results in claims that, in practice, detainees are not afforded the rights of access to a lawyer, independent doctors or family members. The Committee is concerned that these rules create conditions where abusive practices are sanctioned.

The State party should ensure in practice that every detainee can exercise the right to access to a lawyer, independent doctor and family member and other legal guarantees to ensure protection from torture.

Independent monitoring of places of detention

(13) While noting the State party's affirmation that all places of detention are monitored by independent national and international organizations without any restrictions and that they would welcome further inspections including by the International Committee of the Red Cross (ICRC), the Committee remains concerned at information received, indicating that acceptable terms of access to detainees were absent, causing, inter alia, the ICRC to cease prison visits in 2004.

The State party should ensure that fully independent monitoring of detention and other custodial facilitates is permitted, including by independent and impartial national and international experts and non-governmental organizations, in accordance with their standard methodologies.

Results of investigations

(14) While appreciating the responses by the State party regarding cases raised by the Committee in which violations of the Convention are alleged, the Committee notes with concern that the State party often presents extensive detail on the alleged crimes committed by individuals rather than providing information on the results of investigations into the allegations of torture.

The State party is reminded that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.

Fully independent complaints mechanism

(15) Notwithstanding the bodies established by the State parties to investigate complaints, such as through instruction 334 of the Ministry of Internal Affairs and special staff inspection units and the Parliamentary Ombudsperson, the Committee is concerned that these bodies have not been effective in combating torture and lack full independence. The Committee expresses concern that despite the State party's report of thousands of cases registered annually about alleged abuses by law enforcement personnel, and the Ombudsperson's visits to places of detention, it was stated that no appeals regarding torture were received and no reason provided. The Committee also notes that the State party should consider making the declarations under articles 21 and 22 of the Convention.

The State party should ensure in law and in practice that every person has the right to complain to a fully independent mechanism that will investigate and respond promptly, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The State party is urged to ensure that all procedures for dealing with these complaints are effective and independent and should take the necessary measures to ensure that the Parliamentary Ombudsperson is fully independent, in accordance with the Paris Principles. In addition, the State party should make the necessary declarations under articles 21 and 22 of the Convention.

Closure of human rights and other independent organizations

(16) The Committee is concerned at the information received about the intimidation, restrictions and imprisonment of members of human rights monitoring organizations, human rights defenders and other civil society groups, and the closing down of numerous national and international organizations, particularly since May 2005. The Committee appreciates the information that Mutabar Tojibayava is eligible for amnesty, but remains concerned at the reports of ill-treatment and denial of fundamental safeguards regarding her trial and those of other civil society advocates and detainees.

The State party should take all necessary measures to ensure that independent human rights monitors are protected from unjust imprisonment, intimidation or violence as a result of their peaceful human rights activities.

The Committee urges the State party to release human rights defenders imprisoned and/or sentenced because of their peaceful professional activities and to facilitate the reopening and full functioning of independent national and international human rights organizations, including the possibility of conducting unannounced independent visits to places of detention and confinement.

Training of personnel

(17) The Committee takes note of the extensive information provided on training of law enforcement officials and penitentiary staff regarding human rights. The State party's information does not clarify whether this training has been effective. The Committee also notes a lack of information provided on gender specific training.

The State party should provide specific training to its medical personnel dealing with detainees on how to identify signs of torture and ill-treatment and ensure that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) becomes an integral part of the training provided to physicians and others involved in health care of detainees.

In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on cases of torture and ill-treatment and provide information about gender specific trainings.

Compensation and rehabilitation

(18) Noting the State party's information about victims' rights to material and moral rehabilitation envisaged in the Criminal Procedure Code and the Civil Code, the Committee is concerned at the lack of examples of cases in which the individual received such compensation, including medical or psychosocial rehabilitation.

The State party should provide compensation, redress and rehabilitation to victims, including the means for as full rehabilitation as possible and provide such assistance in practice.

Independence of the judiciary

(19) The Committee remains concerned that there is a lack of security of tenure of judges, that the designation of Supreme Court judges rests entirely with the Presidency, and that lower level appointments are made by the executive which re-appoints judges every five years.

The State party should guarantee the full independence and impartiality of the judiciary, inter alia, by guaranteeing judges' security of tenure.

Evidence obtained through torture

(20) While appreciating the frank acknowledgement by the representatives of the State party that confessions under torture have been used as a form of evidence in some proceedings, and notwithstanding the Supreme Court's actions to prohibit the admissibility of such evidence, the Committee remains concerned that the principle of non-admissibility of such evidence is not being respected in every instance.

The State party should take immediate steps to ensure that in practice evidence obtained by torture may not be invoked as evidence in any proceedings. The Committee reiterates its previous recommendation that the State party should review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures.

Violence against women

(21) The Committee is concerned by reports of cases of violence against women, including in places of detention and elsewhere, and notes the lack of information about prosecutions of persons in connection with cases of violence against women.

The State party should ensure the protection of women in places of detention and elsewhere, and the establishment of clear procedures for complaints as well as mechanisms for monitoring and oversight. The State party should ensure protection of women by adopting specific legislative and other measures to prevent in practice domestic violence in accordance with the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) and provide for protection of victims, access to medical, social and legal services and temporary accommodation. Perpetrators should also be held accountable.

(22) The Committee remains concerned at trafficking in women for purposes of sexual exploitation.

The State party should adopt and strengthen effective measures to prevent and combat trafficking in women.

(23) The Committee is concerned about reports about inter-prisoner violence, including sexual violence, in places of detention.

The State party should take prompt measures to protect detainees in practice from such inter-prisoner violence. Further, the State party should collect information on such incidents and provide the Committee with its findings and measures taken to prevent, investigate, and prosecute or punish persons found responsible.

Non-refoulement

(24) The Committee is concerned at the allegations received that individuals have not been afforded the full protection provided for by article 3 of the Convention in relation to expulsion, return or deportation from another country. The Committee is particularly concerned at reports of forcible return of recognized refugees and/or asylum-seekers from neighbouring countries and the unknown conditions, treatment and whereabouts since their arrival in the State party, some of whom were extradited from neighbouring countries. Although the State party's representatives stated that there is no longer a need for the United Nations High Commissioner for Refugees to be present in the country, the Committee is concerned that at least 700 recognized refugees are resident in the State party and are in need of protection and resettlement.

The State party should adopt a refugee law that complies with the terms of the Convention. The State party should invite the United Nations High Commissioner for Refugees to return and to assist in providing protection and resettlement for the refugee population. It is encouraged to consider becoming party to the 1951 Refugee Convention and its 1967 Optional Protocol.

Other ill-treatment

(25) The Committee reiterates its concern with the delay in transferring the prison system from the Ministry of Internal Affairs to the Ministry of Justice and notes that insufficient explanation was provided.

The State party should consider the transfer of the prison system from the Ministry of Internal Affairs to the Ministry of Justice without delay, with the aim of institutionalizing oversight and accountability for executive decisions in the judicial branch of Government.

(26) While the Committee welcomes the entry into force of the law eliminating the death penalty, it remains concerned about the past practice of the State party resulting in failure to inform families of persons sentenced to death about the time and place of executions and the location of the bodies, which causes them distress.

The State party should ensure that relatives of persons sentenced to death are treated in a humane manner to avoid further suffering due to the secrecy surrounding executions and that remedial measures are taken.

(27) The Committee recommends that the State party consider becoming a party to:

(a) The Optional Protocol to the Convention;

(b) The Rome Statute of the International Criminal Court;

(c) The core United Nations human rights treaties to which it is not yet a party.

Data Collection

(28) The Committee notes that much information was provided in the State party's report on a number of situations, but that this information was not disaggregated in the way requested by the Committee, thereby hampering the identification of possible patterns of abuse or measures requiring attention.

The State party should provide detailed statistical data in its next periodic report, disaggregated by gender, ethnicity or nationality, age, geographical region and type and location of place of deprivation of liberty, on complaints related to cases of torture and other ill-treatment, including those rejected by the courts, as well as related investigations, prosecutions and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.

(29) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(30) The State party is encouraged to disseminate widely the reports it submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 7, 9, 10, 11 and 14 above.

(32) The State party is invited to submit its next periodic report, which will be the fourth report, by 30 December 2011.

38. Algeria

(1) The Committee considered the third periodic report of Algeria (CAT/C/DZA/3) at its 815th and 818th meetings, held on 2 and 5 May 2008 (CAT/C/SR.815 and 818), and adopted the following concluding observations at its 827th and 828th meetings, held on 13 May 2008 (CAT/C/SR.827 and 828).

A. Introduction

(2) The Committee welcomes the third periodic report of Algeria, the written replies (CAT/C/DZA/Q/3/Add.1) to the list of issues (CAT/C/DZA/Q/3) and the additional information provided during the discussion of the report, while regretting the eight-year delay in its submission. The Committee also welcomes the resumption of constructive dialogue with the high-level delegation sent by the State party, and is grateful for the exhaustive replies to the questions raised.

B. Positive aspects

(3) The Committee notes with satisfaction:

(a) The provisions included in the amendments to the Criminal Code, articles 263 bis, ter and quater, making torture a criminal offence;

(b) The publication of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention") in the Official Gazette of the People's Democratic Republic of Algeria, No. 11, of 26 February 1997;

(c) The State party's signing of the International Convention for the Protection of All Persons from Enforced Disappearance on 2 February 2007;

(d) The moratorium on the death penalty in force in the State party since 1993;

(e) The fact that the State party does not engage in the practice of seeking diplomatic assurances from a third State to which it plans to extradite, return or expel an individual;

(f) The commitment to national reconciliation expressed by the State party, as well as its stated intention to continue to better promote and protect human rights.

C. Subjects of concern and recommendations

Definition of terrorism and state of emergency

(4) The Committee expresses its concern about the rather vague definition of terrorism set out in article 87 bis of the Criminal Code, although it understands that the State party has gone to some lengths to protect its national security and its citizens from the threats posed by terrorist acts. The Committee is concerned that this definition could extend to acts which may be unrelated to terrorism and lay the persons thereby arrested open to actions which could violate the Convention. Furthermore, the Committee is also concerned that the state of emergency declared in 1992 has been extended, despite information provided by the State party itself showing significant improvement in the security situation. The extension of the state of emergency is reflected by the continuing delegation of judicial police functions to officials of the Intelligence and Security Department, who have reportedly been behind numerous cases of torture and cruel, inhuman and degrading treatment committed in the territory of the State party (art. 2).

The State party should make sure that counter-terrorism measures are consistent with the commitments undertaken by Algeria under the Convention. The State party should also ensure the strict implementation of the Convention, particularly article 2, paragraph 2, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In addition, the definition of terrorist and subversive acts should not give rise to interpretations whereby the legitimate expression of the rights established under the Covenant on Civil and Political Rights can be sanctioned as a terrorist act. The State party should also review the need for extending the state of emergency in the light of the criteria laid down in article 4 of the Covenant, to which Algeria is a party.

Basic safeguards for detainees

(5) While noting the amendments made to the Code of Criminal Procedure, the Committee remains concerned about reports that the maximum period of remand in custody (up to 12 days) can, in practice, be extended repeatedly. The Committee further notes with concern that the law does not guarantee the right to counsel during the period of remand in custody, and that the right of a person in custody to have access to a doctor and to communicate with his or her family is not always respected (art. 2).

The State party should ensure that the maximum period of remand in custody is respected in practice and take the necessary steps so that the right of persons remanded in custody to have access to counsel as soon as they are arrested is guaranteed by the Code of Criminal Procedure and strictly enforced.

In addition, the State party should ensure that the right of any detainee to have access to a doctor and to communicate with his or her family, in accordance with article 51 of the Code of Criminal Procedure, is respected in practice. The State party should also establish a national register of prisoners, including persons detained in institutions run by the Intelligence and Security Department.

Lastly, insofar as the State party indicated that the judicial police, under the supervision of the prosecutor's office, has introduced a procedure for recording on video the interrogation of persons suspected of terrorism, it should also ensure that such recordings are made available to the defence attorneys.

Secret detention centres

(6) The Committee takes note of the State party's assurances that Intelligence and Security Department officers are placed under the control of the Public Prosecutor's Office, and that secure detention centres no longer exist as of November 1996. The Committee nevertheless remains concerned about reports of the existence of secret detention centres run by the Department in its military barracks in Antar, in the Hydra district of Algiers, which are outside the control of the courts. The Committee is also concerned about the lack of information showing that the competent judicial authority has taken steps to look into these allegations (arts. 2 and 11).

The State party should ensure that all places of detention, including those run by the Intelligence and Security Department, are immediately placed under the control of the civilian prison administration and the prosecutor's office. It should also ensure that the competent judicial authority takes the necessary steps to look into the allegations concerning the existence of secret detention centres run by the Department.

Juvenile detainees

(7) The Committee expresses its concern over the fact that minors aged 16 may be found criminally responsible and detained in the context of counter-terrorism efforts. The Committee is also concerned about information received that juvenile detainees are not separated from adults (arts. 2 and 11).

The State party should consider raising the minimum age of criminal responsibility in terrorism cases so that it is consistent with generally accepted international standards on the matter. The State party should also ensure that minors receive age-appropriate treatment in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The State party should also guarantee that juvenile detainees are separated from adults.

Independence of the National Advisory Commission for the Promotion and Protection of Human Rights

(8) While noting with satisfaction the establishment of the National Advisory Commission for the Promotion and Protection of Human Rights on 9 October 2001, the Committee remains concerned about the lack of available information on the work of the Commission. The Committee is also concerned that the members are appointed by Presidential decree and that, according to information provided by the Algerian delegation, the President decides whether to follow up on the recommendations of the Commission, including the publication of its report, which is an obstacle to the transparency needed for it to run smoothly and independently (art. 2).

The State party should ensure that the annual reports on the work of the National Advisory Commission for the Promotion and Protection of Human Rights are made public and widely distributed. The State party should strengthen the independence of the Commission in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) and enhance its role in monitoring national and international obligations undertaken by Algeria for the protection of human rights, including strict enforcement of the provisions of the Convention.

Non-refoulement and collective expulsion

(9) The Committee is concerned about allegations received of collective expulsions of migrants in violation of their basic right to have their case reviewed individually and to appeal against the expulsion decision. The Committee is also concerned that some persons might be expelled to States where they risk being subjected to torture (art. 3).

The State party should fully implement the provisions of article 3 of the Convention and ensure that the persons under its jurisdiction have their cases duly considered by the competent authorities and receive fair treatment during all stages of the procedure, including the opportunity to request an effective, independent and impartial review of the relevant expulsion or removal decisions, and to exercise the right of appeal.

In this respect, the State party should ensure that before the authorities responsible for overseeing foreign nationals take a decision to expel a foreign national who has entered or is residing illegally in Algeria, they conduct a thorough review of the situation in all cases to ensure that the person concerned would not be subjected to torture or inhuman or degrading treatment in the country to which he or she could be sent.

Training of law enforcement personnel

(10) While taking note of the information provided by the delegation of the State party concerning its efforts to provide human rights training for law enforcement personnel, the Committee nevertheless remains concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers, including officers of the Intelligence and Security Department (art. 10).

The State party should step up its efforts to provide education and training on the prohibition against torture, especially among Intelligence and Security Department officials, and establish evaluation and monitoring mechanisms to measure the results.

Impunity of members of armed groups and State officials

(11) The Committee takes note of the fact that order No. 06-01 establishing the Charter for Peace and National Reconciliation provides for an amnesty for members of armed groups and State officials. The Committee notes that members of armed groups who have given themselves up to the authorities will not be prosecuted or will be given a reduced sentence as long as they have committed no mass killings, bomb attacks or rapes (chap. 2). The Committee reminds the State party that prosecution may not be waived under any circumstances for other international crimes such as torture or enforced disappearance. The Committee also notes, with respect to State officials, that article 45 of the order specifies that "no proceedings may be instituted individually or collectively against any of the components of the defence and security forces of the Republic for actions taken to protect persons and property, safeguard the nation and preserve the institutions of the Republic of Algeria", without excepting international crimes such as torture or enforced disappearance. These provisions are not consistent with the obligation of every State party to conduct an impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, to prosecute the perpetrators of such acts and to compensate the victims (arts. 12, 13 and 14).

The State party should amend order No. 06-01, article 45, chapter 2, to specify that waivers of prosecution do not apply under any circumstances to crimes such as torture, including rape, and enforced disappearance, which are crimes to which the statute of limitations does not apply. The State party should immediately take all necessary steps to guarantee that past or recent cases of torture, including cases of rape, and enforced disappearance, are investigated systematically and impartially, the perpetrators of such acts are prosecuted and punished in a manner commensurate with the gravity of the acts committed and the victims are adequately compensated. To that end, the Committee draws the attention of the State party to paragraph 5 of its general comment No. 2 (2007), in which it expressed the view that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.

Missing persons

(12) The Committee notes the acknowledgement by the State party of the enforced disappearance of thousands of persons in Algeria since the start of the 1990s. It also notes that the figures put forward by the Government concerning persons who have disappeared since the 1990s range from 4,000 to 7,000. The Committee expresses its concern that despite these facts the competent judicial authorities have not initiated proceedings to investigate the fate of missing persons and to identify, prosecute and punish the perpetrators of enforced disappearances. This constitutes a violation of articles 12, 13 and 14 of the Convention. The Committee is also concerned that the report of the ad hoc National Commission on Missing Persons has not been made public to date. The publication of these facts would enable anyone with information which could help to locate the missing persons to communicate it to the competent authorities (arts. 12, 13 and 14).

The competent judicial authorities have the responsibility to launch investigations spontaneously without requiring individual complaints to be registered in order to shed light on the fate of missing persons, identify, prosecute and punish the perpetrators of acts of enforced disappearance and adequately compensate the families of missing persons. The State party should make a commitment to investigate every case of enforced disappearance and communicate the results of investigations to the families of missing persons, including by immediately making public the final report of the ad hoc National Commission on Missing Persons.

The Committee also considers that the publication of the names of missing persons registered since 1990 could be very useful during the gathering of information from persons who could provide facts to help move the investigation forward. The Committee also hopes that the State party will submit to it as soon as possible the list of missing persons registered since the 1990s.

(13) The Committee expresses its concern over the provisions of order No. 06-01 implementing the Charter for Peace and National Reconciliation which require the families of missing persons to certify the death of the family member in order to receive compensation, which could constitute a form of inhuman and degrading treatment for such persons by laying them open to additional victimization. The Committee is concerned that the criteria established for compensating the families of missing persons have not been made public (art. 14).

The State party should abolish the rule obliging families to certify the death of the missing person in order to receive compensation. The Committee reminds the State party that the enforced or involuntary disappearance of persons may constitute inhuman treatment for the members of families of missing persons. The State party should also guarantee the right of such families to seek redress or be fairly and adequately compensated, including by giving them the necessary psychological, social and financial support so that they may make the fullest possible readjustment. The Committee hopes that the State party will communicate to it as soon as possible the criteria for compensating the families of missing persons.

Impartial investigation

(14) While noting the explanations of the Algerian delegation concerning the death of Mounir Hammouche in police custody and the autopsy report which concluded that he committed suicide, the Committee remains concerned at information that the family of the deceased did not have access to the autopsy report. According to information received by the Committee, the family also noted that the body bore signs of a head wound and bruises on the hands and feet (art. 12).

The State party should launch prompt and impartial investigations spontaneously and systematically wherever there is reasonable ground to believe that an act of torture has been committed, including in the event of the death of a detainee. The State party should also ensure that the results of the investigation are communicated to the families of the victims.

Violence against women

(15) The Committee expresses its concern at reports of several thousand cases of rape of women by members of the armed groups during the internal conflict in the State party. The Committee is also concerned about the lack of investigations, prosecutions and punishment of members of armed groups in rape cases and the lack of compensation and medical, psychological and social rehabilitation of the victims of such acts (arts. 12 and 14).

The State party should ensure that the identified perpetrators of sexual violence are prosecuted and duly punished. It should also appoint an independent commission to investigate acts of sexual violence committed during the internal conflict and make the results of the investigation public. The State party should also ensure that all the victims of sexual violence committed during the internal conflict receive prompt and adequate compensation and medical, psychological and social rehabilitation. These recommendations are consistent with those contained in the report which the Special Rapporteur on violence against women, its causes and consequences, presented to the Human Rights Council (A/HRC/7/6/Add.2).

Acts of mob violence

(16) The Committee is concerned about information received concerning many acts of mob violence against religious minorities and persons who are lawfully seeking alternative modes of expression and behaviour. The Committee is alarmed, among other things, about information concerning repeated acts of violence and collective rapes suffered by women, including single women, suspected of prostitution by their neighbours, particularly in Hassi Messaoud and Tebessa. The Committee is also concerned about the State party's inability to conduct an investigation to prosecute the perpetrators of such acts (arts. 12 and 16).

The State party should ensure that all necessary steps are taken to investigate cases of mob violence, particularly collective violence targeting religious minorities and people who are seeking alternative modes of expression and behaviour, in order to prosecute and punish the perpetrators of such acts of violence.

Right to an effective remedy

(17) While noting the assurances given by the Algerian delegation that article 46 of order No. 06-01 implementing the Charter for Peace and National Reconciliation does not constitute an obstacle to exercise of the right to an effective remedy, the Committee nevertheless remains concerned that this provision specifies imprisonment for three to five years and a fine for anyone who undermines the institutions of the State party, insults the honour of its officials or sullies the image of the State party at the international level. The Committee is concerned that this provision could restrict the right of any person who claims to have been subjected to torture in the territory of the State party to file a complaint before the competent judicial authorities or to refer the matter to the Committee in accordance with article 22 of the Convention (art. 13).

The State party should amend article 46 of order No. 06-01 implementing the Charter for Peace and National Reconciliation in order to guarantee to any person who claims to have been subjected to torture the right to an effective remedy at both the national and international level, in accordance with article 13 of the Convention. The State party should also inform the public of its right to refer cases to the Committee under article 22 of the Convention.

Use of confessions in legal proceedings

(18) While noting the Algerian delegation's assurances that confessions are used only for information purposes in legal proceedings, in accordance with article 215 of the Code of Criminal Procedure, the Committee remains concerned about the lack of a provision in the State party's legislation clearly specifying that any statement that is proved to have been obtained as a result of torture may not be cited as evidence in any proceedings, in accordance with article 15 of the Convention. In addition, the Committee is concerned that article 213 of the Code of Criminal Procedure specifies that, "as with any evidence, the evaluation of confessions is a matter for the judge", as well as information received that confessions obtained as a result of torture have been admitted in legal proceedings (art. 15).

The State party should amend its Code of Criminal Procedure to make it fully consistent with article 15 of the Convention. The State party should also provide the Committee with information on the number of cases where confessions made under torture, duress or threat have not been admitted as evidence.

Corporal punishment and violence within the family

(19) While noting with satisfaction that corporal punishment against children is forbidden in school, the Committee remains concerned about the lack of any provision in the legislation of the State party prohibiting the use of this practice within the family. The Committee also notes with concern the lack of any provision in its domestic legislation prohibiting domestic violence against women (art. 16).

The State party should incorporate into its domestic legislation a provision prohibiting the use of corporal punishment against children within the family and domestic violence against women.

(20) The Committee strongly encourages the State party to collaborate with the United Nations Human Rights Council special procedures and grant permission for a visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, while fully respecting the mandates of the fact-finding missions sent under the United Nations special procedures.

(21) The Committee calls on the State party to ratify the principal United Nations human rights agreements to which it is not yet a party, including the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(22) The State party is invited to ratify the Optional Protocol to the Convention as soon as possible and to establish a national mechanism responsible for conducting periodic visits in all places of detention in order to prevent torture or any other cruel, inhuman or degrading treatment.

(23) The State party is encouraged to ratify the Rome Statute of the International Criminal Court.

(24) The State party is urged to widely disseminate the reports submitted by Algeria to the Committee, as well as the Committee's conclusions and recommendations, in the national languages through official websites, the media and non-governmental organizations. The State party is also encouraged to distribute its reports to national human rights non-governmental organizations before submitting them to the Committee.

(25) The Committee invites the State party to submit its core document in accordance with the requirements concerning the common core document set out in the harmonized reporting guidelines adopted by international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(26) The Committee requests the State party to provide it, within a year, with information on action it has taken to follow up the recommendations of the Committee included in paragraphs 4, 6, 12 and 15 above.

(27) The State party should submit its fourth periodic report to the Committee no later than 20 June 2012.

39. Australia

(1) The Committee considered the third periodic report of Australia (CAT/C/67/Add.7) at its 812th and 815th meetings (CAT/C/SR.812 and 815) held on 29 and 30 May 2008, and adopted, at its 828th meeting (CAT/C/SR.828), the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the third periodic report of Australia as well as the detailed and thorough replies to the list of issues and the addendum, which provided additional information on the legislative, administrative, judicial and other measures taken by the State party for the implementation of the Convention. The Committee also notes with satisfaction the constructive dialogue held with a competent and multisectoral delegation.

(3) The Committee notes with satisfaction that the State party has submitted its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting under international human rights treaties.

B. Positive aspects

(4) The Committee notes with appreciation the legislative amendments adopted in 2005 related to the immigration detention. In particular, the Committee welcomes:

(a) The changes in law and in practice with respect to children in immigration detention;

(b) The closure of the offshore processing centres in Nauru and Papua New Guinea and the decision to end the so-called Pacific Strategy;

(5) The Committee welcomes the Government's apology to the Aboriginal and Torres Strait Islander peoples for past policies and laws which resulted in the removal of children from their families and communities.

(6) The Committee notes with appreciation the State party's commitment to become a party to the Optional Protocol to the Convention.

(7) The Committee welcomes the State party's ratification of the Rome Statute of the International Criminal Court on 1 July 2002.

C. Main issues of concerns and recommendations

Article 1

(8) The Committee, while noting that the Australian Government is considering the enactment in Commonwealth law of a specific offence of torture which would have extraterritorial application, is concerned that the State party does not have an offence of torture at the Federal level and that there are gaps in the criminalization of torture in certain States and Territories (arts. 1 and 4).

The State party should ensure that torture is adequately defined and specifically criminalized both at the Federal and States/Territories levels, in accordance with article 1 of the Convention.

Article 2

(9) The Committee is concerned that the Convention has been only partially incorporated into Federal law and noted that the State party does not have a constitutional or legislative protection of human rights at the Federal level, i.e. a Federal Bill or Charter of Rights protecting, inter alia, the rights contained in the Convention.

The State party should fully incorporate the Convention into domestic law, including by speeding up the process to enact a specific offence of torture at the Federal level. The State party should continue consultations with regard to the adoption of a Bill of Rights to ensure a comprehensive constitutional protection of basic human rights at the Federal level.

(10) The Committee, while noting that there are a number of legislative and procedural safeguards ensuring that individuals are treated in accordance with their rights, is nonetheless concerned about the following issues related to the State party's anti-terrorism laws and practice:

(a) The increased powers provided to the Australian Security Intelligence Organization (ASIO), including the possibility of detaining a person for renewable periods of seven days for questioning, which pose some difficulties especially due to the lack of a right to a lawyer of choice to be present during the questioning and of the right to seek a judicial review of the validity of the detention;

(b) The lack of judicial review and the character of secrecy surrounding imposition of preventative detention and control orders, introduced by the Anti-Terrorism Act (No. 2) 2005;

(c) Reports concerning the harsh conditions of detention of unconvicted remand prisoners charged with terrorism-related offences, also taking into account their status of accused (and not convicted) persons.

The State party should:

(a) Ensure that the increased powers of detention of ASIO are in compliance with the right to a fair trail and the right to take proceedings before a court to determine the lawfulness of the detention;

(b) Guarantee that both preventative detention and control orders are imposed in a manner that is consistent with the State party's human rights obligations, including the right to a fair trial including procedural guarantees;

(c) Ensure that accused remand prisoners are separated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons.

(11) The Committee is concerned at the mandatory detention policy for those persons who enter irregularly the State party's territory. In this respect, the Committee is especially concerned at the situation of stateless persons in immigration detention who cannot be removed to any country and risk being potentially detained "ad infinitum".

The State party should:

(a) Consider abolishing its policy of mandatory immigration detention for those entering irregularly the State party's territory. Detention should be used as a measure of last resort only and a reasonable time limit for detention should be set; furthermore, non custodial measures and alternatives to detention should be made available to persons in immigration detention;

(b) Take urgent measures to avoid the indefinite character of detention of stateless persons.

(12) The Committee welcomes information from the State party indicating the recent end of the policy of transferring asylum-seekers to offshore processing centres. Yet the Committee notes that "excised" offshore locations, notably Christmas Island, are still used for the detention of asylum-seekers who are subsequently denied the possibility of applying for a visa, except if the Minister exercises discretionary power.

The State party should end the use of "excised" offshore locations for visa processing purposes in order allow all asylum-seekers an equal opportunity to apply for a visa.

(13) The Committee notes that the provision of a medical practitioner of the arrested person's choice is not a statutory right, but rather a duty of care requirement for Australian Federal Police members undertaking custodial duties.

The State party should ensure the right to appoint a fully independent medical practitioner, preferably of the arrested person's choice.

(14) The Committee notes with appreciation the work of the Human Rights and Equal Opportunities Commission (HREOC) to protect and promote human rights in the State party, but regrets that:

(a) While HREOC is empowered to investigate complaints related to torture and other cruel, inhuman or degrading treatment arising from the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, the Convention against Torture is not included in HREOC's complaint handling jurisdiction;

(b) HREOC can only make recommendations of an advisory nature;

(c) HREOC's complaint handling powers do not extend to investigating the acts and practices of intelligence agencies.

The State party should consider strengthening and extending the mandate of the HREOC, inter alia, to the handling of complaints for violation of the Convention against Torture, including for acts committed by intelligence agencies officers. Furthermore, the Committee urges the State party to give adequate follow-up to the recommendations of HREOC.

Article 3

(15) The Committee is concerned that the prohibition of non-refoulement is not enshrined in the State party's legislation as an express and non-derogable provision, which may also result in practices contrary to the Convention. The Committee also notes with concern that some flaws related to the non-refoulement obligations under the Convention may depend on the exclusive use of the Minister's discretionary powers thereto. In this respect, the Committee welcomes the information that the same Minister for Immigration and Citizenship has indicated that the high degree of discretionary authority available to him under existing legislation should be reconsidered.

The State party should explicitly incorporate into domestic legislation, both at Federal and States/Territories levels the prohibition whereby no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture (non-refoulement), and implement it in practice. The State party should also implement the Committee's previous recommendations formulated during the consideration of the State party's second periodic report to adopt a system of complementary protection ensuring that the State party no longer solely relies on the Minister's discretionary powers to meet its non-refoulement obligations under the Convention.

(16) The Committee reminds States parties that under no circumstances can they resort to diplomatic assurances as a safeguard against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.

The State party, if resorting to diplomatic assurances in any other situation than those that must be excluded by article 3 of the Convention, should provide the Committee with information in its next report on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001; the State party's minimum requirements for such assurances or guarantees; the measures of subsequent monitoring it has undertaken in such cases as well as the legal enforceability of the assurances or guarantees given.

(17) The Committee notes that section 198 (6) of the Migration Act provides that a person in immigration detention must be removed from Australia as soon as reasonably practicable. In this respect, while noting that the current policy of the Department of Immigration and Citizenship (DIAC) is that a protection visa applicant in immigration detention will not be removed from Australia pending the outcome of the judicial review or the Ministerial Intervention request in relation to the application, the Committee is concerned that appeals filed against a decision not to grant asylum or to deny or cancel a visa do not seem to have automatic suspensive effect.

The State party should ensure that effective remedies are available to challenge the decision not to grant asylum or to deny or cancel a visa. Such remedies should have the effect of suspending the execution of the above decision, i.e. the expulsion or removal.

Article 4

(18) The Committee, underlining that the conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and that, therefore, the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment, believes that the prohibition of ill-treatment has likewise non-derogable nature under the Convention. In this respect, the Committee notes with concern that the Crimes (Torture) Act 1988 does not contain a provision criminalizing cruel, inhuman or degrading treatment (arts. 4 and 16).

The State party should introduce a specific offence covering the acts included in article 16 of the Convention; this offence could be also introduced in the State party's legislation in the context of the possible new offence of torture to be included at the Federal level.

Article 5

(19) The Committee is concerned that the State party might have failed to establish its jurisdiction in some cases where Australian nationals have been victims of acts of torture abroad.

The State party should consider establishing its jurisdiction over the offences referred to in article 4 of the Convention in all cases listed in article 5 of the Convention, including when the victim is a national of the State party.

Articles 3, 6, 7, 8 and 9

(20) The Committee is concerned that under the Mutual Assistance in Criminal Matters Act it is not mandatory (representing only discretionary power) to refuse extradition when there are substantial grounds to believe that this extradition may be in breach of the persons' rights under the Convention.

The State party should ensure that extradition is refused in all cases where extradition would be towards a State where there are substantial grounds to believe that the person would be in danger of being subjected to torture.

Article 10

(21) The Committee notes the State party's reply indicating that all law enforcement and military personnel, including contractors, are provided with training on their obligations under the Convention against Torture prior to overseas deployment, but is concerned that this training is not systematic.

The State party should ensure that education and training of all law enforcement or military personnel, including contractors, are conducted on a regular basis, in particular for personnel deployed overseas. This should include training on interrogation rules, instructions and methods, and specific training on how to identify signs of torture and cruel, inhuman or degrading treatment. Such personnel should also be instructed to report such incidents.

The State party should also regularly evaluate the training provided to its law enforcement and military personnel and contractors, as well as ensure regular and independent monitoring of their conduct.

(22) The Committee notes that training on human rights obligations is provided for immigration officials and personnel employed at immigration detention centres; however it is concerned over reports that such training is inadequate.

The State party should ensure that education and training of all immigration officials and personnel, including health service providers, employed at immigration detention centres, are conducted on a regular basis. The State party should also regularly evaluate the training provided.

Article 11

(23) The Committee is concerned about the arrangements for the custody of persons deprived of their liberty. In particular, the Committee notes with concern:

(a) Overcrowding in prisons, in particular in Western Australia;

(b) The insufficient provision of mental health care in prisons and reports indicating that mentally ill inmates are subjected to extensive use of solitary confinement and subsequent increased risks of suicide attempts;

(c) The disproportionately high numbers of indigenous Australians incarcerated, notably among them the increasingly high rates of children and women;

(d) The continued reports of indigenous deaths in custody due to causes that are not clearly determined.

In order to improve the arrangements for the custody of persons deprived of their liberty, the State party should:

(a) Undertake measures to reduce overcrowding, including consideration of non-custodial forms of detention, and in the case of children in conflict with the law ensure that detention is only used as a measure of last resort;

(b) Provide adequate mental health care for all persons deprived of their liberty;

(c) Abolish mandatory sentencing due to its disproportionate and discriminatory impact on the indigenous population;

(d) Seek to prevent and investigate any deaths in custody promptly. Furthermore, the State party should continue implementation of pending recommendations from the Royal Commission into Aboriginal Deaths in Custody of 1991.

(24) The Committee is concerned over the harsh regime imposed on detainees in "super-maximum prisons". In particular, the Committee is concerned about the prolonged isolation periods to which detainees, including those pending trial, are subjected and the effect such treatment may have on their mental health.

The State party should review the regime imposed on detainees in "super-maximum prisons", in particular the practice of prolonged isolation.

(25) The Committee welcomes the amendment to the Migration Act in 2005 and the commitment of the new Government that children will no longer be housed in immigration detention centres under any circumstances. However, the Committee regrets that children may still be kept in alternative forms of detention and that during the reporting period a considerable number of children spent long periods of time in detention centres. Furthermore the Committee is concerned about the inadequate mental health care for detained asylum-seekers.

The State party should:

(a) Abide by the commitment that children no longer be held in immigration detention centres under any circumstances. Furthermore, it should ensure that any kind of detention of children is always used as a measure of last resort and for a minimum period of time;

(b) As a matter of priority, ensure that asylum seekers who have been detained are provided with adequate physical and mental health care, including routine assessments.

(26) The Committee notes, as a positive step, the mention of human rights obligations in the Immigration Detention Standards, yet notes that they are not legally binding and lack the provision of an independent monitoring mechanism.

With the objective of improving protection of asylum-seekers, the State party should ensure that the Immigration Detention Standards be codified into legislation and provide for an independent monitoring mechanism.

Articles 12, 13 and 14

(27) The Committee is concerned about allegations against law enforcement personnel in respect of acts of torture and other cruel, inhuman or degrading treatment or punishment and notes a lack of investigations and prosecutions.

The State party should ensure that all allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement officials, and in particular any deaths in detention, are investigated promptly, independently and impartially and, if necessary, prosecuted and sanctioned. Furthermore, the State party should also ensure the right of victims of police misconduct to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.

(28) The Committee is concerned about information indicating that Australian defence officials who were advising the Coalition Provisional Authority had knowledge of abuses committed in Abu Ghraib in 2003, yet did not call for prompt and impartial investigations.

The State party should call for prompt and impartial investigations, including if appropriate, a public inquiry, should it receive information indicating that there are reasonable grounds to believe that acts of torture have been committed in a jurisdiction where it advises or has advised on the exercise of interim authority.

(29) The Committee, while noting the significant efforts undertaken by the State party to provide rehabilitation services to refugees who have suffered torture, regrets that certain victims, such as those on bridging visas, are not guaranteed equal access to these services.

The State party should extend the right to rehabilitation services to all victims of torture, including those on bridging visas, and ensure that there is effective access to such services in all States and Territories.

Article 15

(30) The Committee is concerned that the State party lacks uniform legislation to exclude admission of evidence made as a result of torture. Furthermore, the Committee is concerned over reports indicating that confessional evidence obtained under ill-treatment in other countries has been used in criminal proceedings in Australia.

The State party shall ensure compliance with article 15 of the Convention by the application of uniform and precise legislation in all States and Territories excluding the admission of statements as evidence if made as a result of torture.

Article 16

(31) The Committee notes that corporal punishment of children is not explicitly prohibited in all States and Territories and may still be applied as "reasonable chastisement".

The State party should adopt and implement legislation banning corporal punishment **at home and in public and private schools, detention centres, and all alternative care settings in all States and Territories.**

(32) The Committee recognizes the efforts undertaken at the Federal level to combat human trafficking, yet notes the low level of prosecutions and is concerned over the lack of measures undertaken by the States and Territories. While noting the establishment of recovery programmes for trafficking victims, the Committee regrets that access is restricted to victims who collaborate with investigations.

The State party should take effective measures to prosecute and punish trafficking in persons and provide recovery services to victims on a needs basis, unrelated to whether they collaborate with investigations.

(33) The Committee, while noting efforts to criminalize female genital mutilation at the State and Territory level, remains concerned over the absence of a Federal provision and the overall lack of investigations and prosecutions.

The State party should ensure that the prohibition of female genital mutilation is introduced into the Federal Criminal Code. The State party should also increase prevention measures and detection and investigation efforts, as well as, prosecutions as appropriate.

(34) The Committee encourages the State party to speedily conclude its internal consultation and ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.

(35) The Committee notes with appreciation the State party's previous contributions to the United Nations Voluntary Fund for Victims of Torture and encourages it to resume its support.

(36) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. The report should also include statistics on pretrial detainees and convicted prisoners, disaggregated by crime, ethnicity, age and sex. Information is further requested on compensation and rehabilitation provided to the victims.

(37) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 10, 11 and 25 above.

(38) The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee to the media and non-governmental organizations, through official websites.

(39) The State party is invited to submit its next periodic report, which will be considered as the fifth periodic report, by 30 June 2012 at the latest.

40. Costa Rica

(1) The Committee considered the second periodic report of Costa Rica (CAT/C/CRI/2) at its 818th and 821st meetings, held on 5 and 6 May 2008 (CAT/C/SR.818 and 821), and, at its 830th and 831st meetings (CAT/C/SR.830 and 831), adopted the following concluding observations.

A. Introduction

(2) The Committee notes with satisfaction the presentation of the second periodic report of Costa Rica, welcomes the sincere and open dialogue with the delegation from the State party and expresses appreciation for the written replies to the list of issues (CAT/C/CRI/Q/2/Add.1 and 2), which facilitated the discussions between the delegation and the Committee members. The Committee also thanks the delegation for the replies given to the questions posed and the concerns expressed during consideration of the report.

B. Positive aspects

(3) The Committee notes with appreciation that during the period since the initial report was considered, the State party has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Rome Statute of the International Criminal Court.

(4) The Committee notes with satisfaction the efforts being made by the State party to revise legislation, policies and working practices so as to ensure greater protection of the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and specifically:

(a) The legislative reform criminalizing torture, by means of Law No. 8189 of 6 December 2001 (addition to article 123 bis of the Criminal Code);

(b) The establishment of various means, including a free telephone line, to facilitate the lodging of complaints and habeas corpus applications;

(c) The adoption of a law criminalizing violence against women by the Legislative Assembly in April 2007;

(d) The adoption of a law to enhance efforts to combat the sexual exploitation of minors in June 2007.

C. Principal areas of concern and recommendations

Pretrial detention

(5) The Committee endorses the concerns expressed by the Human Rights Committee (CCPR/C/CRI/CO/5) regarding the duration of pretrial detention and the legally authorized regime of incommunicado detention. It also expresses its concern at the high number of persons held in pretrial detention owing to a general increase in violence in the country, as the State party has acknowledged (art. 2).

The State party should take prompt steps to restrict the use of pretrial detention, as well as its duration, using alternative methods whenever possible when the accused does not represent a danger to society.

Alternative measures

(6) The Committee is concerned at the increase in the prison population and the factors that have contributed to this situation - in particular the limited use of alternative measures, longer prison terms, the criminalization of certain behaviour and the use of pretrial detention as a preventive measure (art. 2).

The Committee takes note of the bill introducing a new Criminal Code which will incorporate alternative measures, and urges the State party to speed up the reforms needed to enable the judiciary to impose alternatives to imprisonment.

Non-return

(7) The Committee notes with concern that the Migration Bill makes no mention of a right to appeal against the decisions of the Visa and Refuge Commission. The Committee is also concerned at the power which the Migration Bill grants to immigration officials to reject illegal immigrants within a radius of 50 kilometres from the border (with no administrative remedy against such decisions), a power which could affect the principle of non-refoulement laid down in article 3 of the Convention, as well as the protection of victims of trafficking (art. 3).

The State party should take steps to ensure that, in the context of migration management, a proper analysis can be conducted of the situation in each case and the situation in the countries from which the "immigrants" come, so as to guarantee respect for the principle of non-refoulement. These steps should include appropriate continuing training of migration officials.

Situation of applicants for refugee status

(8) The Committee expresses concern at continued excessive delays in determination of refugee status.

(9) The Committee expresses concern at the statements made by senior officials linking the rise in crime in the country with the presence of refugees, as the Human Rights Committee has already done (CCPR/C/CRI/CO/5).

The State party should take the necessary steps, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to speed up the processes of determination of refugee status.

The State party should ensure that its officials refrain from making statements which could encourage the stigmatization of refugees and applicants for refugee status.

Detention of non-citizens

(10) The Committee expresses concern at the failure to limit the length of administrative detention of aliens. The Committee takes note of the efforts made by the State party to improve conditions in the Detention Centre for aliens, and the plans to modernize the regional offices and border posts so as to provide suitable conditions for immigrants. However, the conditions in the centres for immigrants remain a matter for concern, especially as regards overcrowding and the lack of procedures or machinery for identifying victims of trafficking in persons and others who are entitled to international protection (arts. 2, 3 and 11).

The State party should ensure that legislation provides for alternatives to custody for migrants. The State party should also set a maximum legal period for detention pending deportation, which should in no circumstances be indefinite.

The Committee invites the State party to continue its efforts to improve detention conditions for all immigrants, in cases where administrative detention is absolutely necessary, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Minimum Rules for the Treatment of Prisoners.

The Committee recommends the adoption of protocols and the provision of proper training for border officials and personnel working in centres for the administrative detention of aliens for the identification of victims of trafficking and others who are entitled to international protection.

Ill-treatment and abuse of authority

(11) The Committee takes note of the efforts made by the State party to address cases of abuse of authority by border guards and prison staff, including specific recommendations that officials should avoid actions or omissions which violate rights. However, the Committee remains concerned at cases of abuse of immigrants and citizens, especially on the grounds of their sexual orientation and/or transsexual identity. The Committee considers that, in particular, the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuse against this group (arts. 2, 11 and 16).

Through training and awareness creation among those concerned, the State party should foster a policy of respect for human rights for all without discrimination. The State party should take steps to ensure continuous monitoring and periodic evaluation of the impact of the training and awareness creation provided for police officers, border guards and prison personnel.

Complaints, investigations and proper convictions

(12) The Committee notes with satisfaction the cases where the Convention has been directly applied by domestic courts. However, the Committee notes that only one complaint of torture has been registered and that no convictions have been handed down for torture since the new law entered into force. The Committee notes with concern that some possible cases of torture have been investigated as abuses of authority despite their gravity. It also notes with concern reports that victims and witnesses are not provided with adequate protection (arts. 2, 11 and 13).

The State party should ensure that legislation on torture is effectively applied and that all those involved, especially police officers and prison staff, border guards, medical personnel and judicial personnel, receive proper training in the new legislation. Detainees should also be given information on the Convention and domestic legislation and on the rules and guidelines for police officers and prison personnel relating to torture.

The Committee welcomes the bill on victim and witness protection and urges the State party to ensure that the victims and witnesses of serious human rights violations are provided with proper protection as soon as possible.

Training on the prohibition of torture

(13) The Committee expresses concern at the fall in the number of hours devoted to human rights in basic police training (art. 10).

The State party should ensure that the police forces receive specific and appropriate training in human rights and on the Convention.

Conditions of detention

(14) The Committee notes with satisfaction the efforts made by the State party to improve the prison infrastructure, solve problems of overcrowding and ensure better health care and better nutrition for prisoners, as well as guaranteeing the right to education and the right to work, including the opening of the Care Centre for Young Adults in September 2005 and the setting up of a unit for prisoners' children aged under 3 (the "Casa Cuna").

(15) The Committee regrets the inadequate budget of the Department, which leads to problems with equipment, allocation of technical and administrative staff and security personnel requirements.

(16) The Committee reiterates the concern it expressed on the occasion of the damage to communal centre F in the La Reforma centre and the detention regime comprising 23 hours of confinement and 1 hour outside (A/56/44, paras. 130-136).

(17) The Committee expresses concern at the general conditions governing access to health care for prisoners. The Committee is particularly concerned that when medical care is not provided in detention centres, security personnel are responsible for decisions on transfers to hospitals without having the necessary technical skills. The Committee also expresses concern at the conditions facing women prisoners.

(18) The Committee expresses concern at the reports of sexual abuse and physical violence against homosexual and transsexual prisoners.

The State party should ensure that the Department has the funds it needs so that conditions of detention are in keeping with international rules and principles relating to the rights of persons deprived of their liberty. The State party should also take steps to improve the infrastructure of communal centre F in the La Reforma centre.

The Committee recommends that the State party should take steps to boost protection for the most vulnerable population against sexual violence, through such measures as the use of confidential machinery for reporting such violence.

The State party should continue its efforts to reorganize the health service so that the conditions in which health care is provided are appropriate and the requisite medical personnel are available in prisons.

The National Institute of Criminology should apply a gender-specific policy for women prisoners. It should also pursue the regionalization of women's prisons so as to avoid the uprooting of women prisoners.

The Committee notes with satisfaction the establishment of the Casa Cuna centre for prisoners' children aged under 3, and recommends the establishment of similar units in the regional centres.

Compensation and rehabilitation for victims

(19) The Committee reiterates the concern at the lack of State programmes for the rehabilitation of victims which it expressed when considering the initial report of the State party (A/56/44, paras. 130-136) (art. 14).

The State party should ensure that victims of torture, other ill-treatment, trafficking and domestic and sexual violence are enabled to benefit from the fullest possible rehabilitation. The Committee urges the State party to include in its next periodic report statistics on measures of compensation ordered by the courts and actually made available to female torture victims.

Data collection

(20) The Committee notes the lack of data on persons deprived of their liberty broken down by age, sex and civil status. It also notes that the Department of Legal Discipline in the Ministry of Public Security has no data broken down by sex, age, ethnic group or minority group.

The next report should contain data on persons deprived of their liberty broken down by age, sex and civil status. The State party should also devise an appropriate system for the collection of data on cases of abuse, broken down by sex, age, ethnic group or minority group.

Manufacture of torture equipment

(21) The Committee notes with concern that there is no legal provision banning the manufacture and marketing of equipment specifically designed for purposes of torture.

The State party should consider the possibility of devising rules and regulations to ban the manufacture and marketing of equipment specifically designed for purposes of torture.

Trafficking in persons

(22) The Committee takes note of the efforts made by the State party to combat trafficking in persons, including the executive decree in 2005 establishing the national coalition to combat illegal smuggling of immigrants and trafficking in persons and the Institutional Protocol for Care for Victims of Trafficking drafted by the National Children's Trust (PANI). However, the Committee expresses concern at the fact that trafficking in persons is not an offence in domestic legislation (art. 16).

The State party should criminalize trafficking in persons in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime.

Corporal punishment

(23) The Committee notes with satisfaction that corporal punishment is banned in education and in juvenile prisons. However, in the family, article 143 of the Family Code states that parents have the right to correct children in a moderate manner, which has been interpreted as allowing the use of corporal punishment (art. 16).

The Committee takes note of the bill to abolish physical punishment of children and young people submitted to the Legislative Assembly by the Ombudsman, and the setting up of a group to discuss the issue. It encourages the State party to expedite the complete prohibition of corporal punishment of children.

Domestic violence and violence against women and children

(24) The Committee takes note of the efforts made by the State party to eradicate domestic violence. The Committee welcomes the information provided by the representative of the State party indicating that there is no

legal obstacle to the application of Act No. 7586 on domestic violence to same-sex couples. However, according to information received by the Committee, the authorities often fail to register or properly investigate reports of domestic violence lodged by persons with a partner of the same sex (art. 16).

(25) The Committee regrets the lack of data broken down by sex and age and the lack of precision in the conceptualization of violence against women and children and the categories of analysis and variables used (art. 16).

The State party should ensure the protection of all victims of domestic violence and other ill-treatment without any discrimination through the registration and investigation of all cases of torture, as well as the prosecution and conviction of those responsible for such acts. The Committee encourages the State party to set up appropriate programmes to raise awareness among the security forces of domestic violence, including sexual violence and violence against children.

The Committee urges the State party to devise a system for the collection of disaggregated data, studies and analyses on the issue of violence against women and children.

(26) The Committee notes with satisfaction the creation of the post of Ombudsman as a means of preventing torture under the Optional Protocol to the Convention against Torture and recommends that it should receive adequate funds to perform that function effectively.

(27) The State party is urged to disseminate widely the reports it submits to the Committee, its replies to the list of issues, the summary records of the meetings and the concluding observations, and the summary records of the Committee, in the appropriate languages, by means of official websites, the media and non-governmental organizations.

(28) The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/MC/2006/3).

(29) The State party is requested to communicate to the Committee within one year its reply to the recommendations made in paragraphs 5, 6, 7, 10 and 12 of the present concluding observations.

(30) The Committee invites the State party to submit its next periodic report, the third, by 30 June 2012 at the latest.

41. Iceland

(1) The Committee against Torture considered the third periodic report of Iceland (CAT/C/ISL/3) at its 826th meeting, held on 9 May 2008 (CAT/C/SR.826), and adopted, at its 831st meeting on 15 May 2008 (CAT/C/SR.831), the concluding observations as set out below.

A. Introduction

(2) The Committee welcomes the third periodic report of Iceland, which was prepared in accordance with the Committee's guidelines and submitted on time. The Committee welcomes also the comprehensive written responses provided to the list of issues (CAT/C/ISL/Q/3/Add.1) and appreciates the fruitful and constructive dialogue with the State party's delegation.

B. Positive aspects

(3) The Committee welcomes the State party's ongoing efforts to comply with its obligations under the Convention and to prevent and eliminate any acts or conduct contrary to its provisions. The Committee notes, inter alia:

(a) The new Application of Punishments Act, No. 49/2005, including its two regulations on the application of punishment and the training of prison warders;

(b) The provisions of the Penal Code, article 227 (a), that provide a framework for punishment for trafficking in human beings, and the signing of the Council of Europe Convention on Action against Trafficking in Human Beings, in May 2005;

(c) The enactment of laws amending the Criminal Penal Code and the establishment of a plan of action with the aim of a more comprehensive response to violence against women and domestic violence, in particular with respect to legal remedies and in cases of sexual offences;

(d) The issuance of ethical rules for police concerning excessive use of physical force and verbal abuse;

(4) The Committee again notes with satisfaction that no complaints of torture have been received from Iceland.

C. Principal subjects of concern and recommendations

Definition of torture and criminalization

(5) While noting the explanations provided by the State party in its second and third periodic reports and in the written replies to the list of issues with regard to the interpretation of the definition of torture and its use in domestic criminal legislation, the Committee regrets that no change has taken place with regard to the State party's position not to fully incorporate the definition of torture as defined in article 1 of the Convention, nor to incorporate torture as a specific crime into domestic criminal legislation (arts. 1 and 4).

The Committee reiterates its previous recommendation, namely that the definition of torture according to article 1 of the Convention be introduced into Icelandic criminal legislation in order to ensure that all elements of torture are included, and that torture be defined as a specific offence in domestic laws. The Committee also draws the attention of the State party to its general comment No. 2 on the implementation of article 2.

Independent monitoring

(6) The Committee notes with appreciation the information provided in the State party report and the written replies to the list of issues that monitoring and inspection of places of detention, prisons and psychiatric facilities can be undertaken by the Parliamentary Ombudsman on his or her own initiative and that recommendations made based on such visits are fully taken into consideration. The Committee is, however, concerned that no legal or administrative system of independent monitoring or inspection of such facilities, in particular of psychiatric facilities, is in place (arts. 2 and 13).

The State party should enhance the capacity of the office of the Parliamentary Ombudsman through appropriate human and financial resources to allow it to undertake monitoring of places of detention, prisons and psychiatric facilities, and establish an independent monitoring and inspection system for such facilities. The State party should also consider the possibility of establishing a national human rights institution in accordance with the Paris Principles.

Prevention of torture and other cruel, inhuman and degrading treatment or punishment

(7) The Committee notes with appreciation the information provided in the State party report and the written replies concerning female and juvenile prisoners and that for practical reasons no separate prisons exist for housing female or juvenile prisoners. The Committee emphasizes that, in the framework of prevention of torture and other cruel, inhuman or degrading treatment or punishment, female prisoners should be separated from male prisoners and juvenile prisoners should be in clearly distinct and separated facilities from adult prisoners (arts. 2 and 11).

The State party should ensure that female and male prisoners are held in separate facilities and, in particular, that juvenile prisoners are held separately from adults. It should also ensure that the prison wardens involved in dealing with female and juvenile prisoners are trained to deal with the necessary sensitivity and characteristics required.

(8) The Committee is concerned about some reported cases of inappropriate handling of incidents by law enforcement officers and border guards, in particular at detention centres, airports and in conjunction with manifestations and demonstrations (arts. 2 and 7).

Regardless of the frequency and gravity of such incidents, the State party should ensure that all allegations are investigated. The State party should provide further detailed information on investigations and the results in its next periodic report.

Solitary confinement

(9) The Committee is concerned about the reported cases of frequent and excessive use of solitary confinement for persons in custody (art. 11).

The State party should investigate promptly the issue of excessive use of solitary confinement and adopt effective measures to prevent such practice.

Non-refoulement and asylum-seeking

(10) The Committee welcomes the information provided during the dialogue on the State party report with regard to cooperation with the United Nations High Commissioner for Refugees. The Committee is however concerned that only two asylum applications have been approved in the past 20 years, and that the State party is reluctant to issue residence permits, even on humanitarian grounds (art. 3).

The State party should ensure through legal and administrative procedures, including review by an independent judicial body concerning rejections, that due consideration is given to each individual case before a final decision is reached and that a constant review of the situations in the countries individuals may be returned or expelled to is carried out.

The State party should also include in its next report more detailed information on how national security considerations can affect the protection of non-refoulement, in accordance with article 3 of the Convention.

(11) While noting the information provided in relation to investigations in the framework of the Council of Europe and alleged rendition flights in Europe, the Committee remains concerned about the reported rendition flights through Iceland and the inadequate response to the allegations by the authorities (arts. 3 and 4).

The State party should provide further information in its next periodic report on measures taken to investigate allegations of rendition flights on Icelandic territory or in its airspace, including outcomes of such measures or investigations.

Education and information

(12) The Committee notes that basic police training and training of prison warders include elements of human rights and the international obligations of Iceland. Furthermore, the Committee notes that the new Coast Guard Act No. 52/2006 states that coast guards should comply with the Police Act and the Criminal Procedure Code. The Committee is, however, concerned that, in some instances, at police stations and airports, police officers and border guards have not handled all incidents with the respect due to the human rights of the individual (art. 10).

The State party should ensure that all law enforcement personnel receive adequate and regular training on the international obligations of Iceland, in particular with respect to its obligations under the Convention against Torture. In addition, the State party should introduce formal training in human rights and humanitarian law for peacekeepers and other personnel assigned to international monitoring missions with the United Nations, the North Atlantic Treaty Organization and the European Union.

Evidence in accordance with article 15

(13) The Committee, while noting the information provided in the State party report and during the dialogue, remains concerned that evidence that might have been obtained through torture may still be used in judicial proceedings (art. 15).

The Committee reiterates its previous recommendation, namely that the State party should bring its domestic criminal legislation into line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.

The State party should also review its practices with regard to video and tape recordings of interrogation procedures with a view to primarily protecting the defendant.

Trafficking in human beings

(14) The Committee notes the developments in the legal and policy frameworks with respect to trafficking in human beings, in particular the new draft bill currently under consideration by the Parliament and the preparations for a national plan of action against trafficking in human beings.

The Committee is, however, concerned at the fact that incidents of trafficking both through and inside the country have been reported and that the State party does not have a system to monitor and assess the extent and impact of or to address this phenomenon effectively (arts. 2 and 16).

The State party should ensure that the plan of action receives adequate financial support for its implementation, and establish a coordinated government-wide programme for data collection, monitoring of the actual situation and providing adequate measures to prevent trafficking in persons and assistance to victims.

The State party should also adopt specific training and sensitization programmes for law enforcement personnel and border guards, and public awareness-raising campaigns revealing the current situation of trafficking in human beings in the country.

Violence against women and children

(15) The Committee notes the recent developments in the national legislative and policy framework on measures to address violence against women and children and domestic violence, in particular the amendments providing for greater punishment when violence has occurred within the family, restraining orders and the expansion of the term of rape. The Committee is of the view that more emphasis could be given to adequate medical and legal services and assistance to victims of violence against women and domestic violence, and to addressing attitudes and opinions in society (arts. 4 and 16).

The State party should continue its efforts to address domestic violence through legislative and policy measures and ensure that the part of the Plan of Action 2006 to 2011 covering protection and assistance to victims receives sufficient funding and the human resources necessary for its implementation. The State party is encouraged to develop national public information campaigns and stimulate broader public discussions in order to address attitudes and stereotypes leading to violence against women further. The State party should provide further detailed information with respect to the assistance and services available for victims in its next periodic report.

(16) While noting the State party's signature of the Optional Protocol to the Convention against Torture, the Committee encourages the State party to proceed to its ratification at the earliest possible date.

(17) The Committee invites the State party to ratify other United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(18) The Committee invites the State party to submit its core document in accordance with the requirements of common-core documents in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.4).

(19) The Committee requests the State party to disseminate its report widely, together with the written answers to the Committee's questions and the concluding observations and summary records of the Committee, through official websites, the media and non-governmental organizations.

(20) The Committee requests the State party to provide, within one year, information on its responses to the recommendations contained in paragraphs 9, 14 and 15 above.

(21) The State party is invited to submit its next report, which will be the fifth periodic report, by 30 June 2012.

42. Indonesia

(1) The Committee considered the second periodic report of Indonesia (CAT/C/72/Add.1) at its 819th and 822nd meetings, held on 6 and 7 May 2008 (CAT/C/SR.819 and CAT/C/SR.822), and adopted, at its 832nd meeting, on 15 May 2008 (CAT/C/SR.832), the concluding observations as set out below.

A. Introduction

(2) The Committee welcomes the second periodic report of Indonesia, which, while generally following the Committee's guidelines for reporting, lacks statistical data and practical information on the implementation of the provisions of the Convention and relevant domestic legislation.

(3) The Committee expresses its appreciation for the extensive written response provided to the list of issues (CAT/C/IDN/Q/2). The Committee also appreciates the expertise, size and high level of the State party delegation, the comprehensive and fruitful dialogue conducted and the additional oral information provided by representatives of the State party to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the continuing effort of the State party to strengthen its institutions and legislation to safeguard universal human rights protection, including the establishment of the Constitutional Court, the National Law Commission, the Judiciary Commission, the Ombudsman Commission, the Prosecutorial Commission, the Police Commission and the Eradication of Corruption Commission, pursuant to articles 2 and 10 of Law No. 4/2004 on Judicial Authority.

(5) The Committee further welcomes the ongoing reform of the State party legal framework with the adoption of the following acts:

(a) Law No. 21/2007 on Combating Criminal Acts of Trafficking in Persons;

(b) Law No. 13/2006 on Witness and Victim Protection;

(c) Law No. 39/2004 on the Placement and Protection of Migrant Workers;

(d) Law No. 23/2004 on Domestic Violence;

(e) Law No. 23/2002 on Child Protection;

(f) Presidential Decree No. 40/2004 on the second National Plan of Action on Human Rights (2004-2009);

(g) Presidential Decree No. 87/2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children, No. 88/2002 on the National Action Plan to Combat Trafficking of Women and Children, No. 87/2002 on the National Action Plan to Combat the Commercial Sexual Exploitation of Children, and No. 59/2002 on the National Action Plan to Combat the Worst Forms of Child Labour, as well as Government regulation No. 9/2008 on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons.

(6) The Committee welcomes the accession of Indonesia to the International Covenant on Civil and Political Rights in 2006.

(7) The Committee also notes with appreciation that Indonesia responded positively to the recommendation of the Committee to receive the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and that a visit to the State party was made in November 2007. The Committee further notes that the Government of Indonesia has also received other special rapporteurs of the Human Rights Council, including the Special Rapporteur on the human rights of migrants, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers.

(8) The Committee further notes with satisfaction that specific reports were submitted to the Committee by the National Commission on Violence Against Women (Komnas Perempuan) and the National Human Rights Commission (Komnas HAM). The Committee regrets that the latter could not attend its meetings.

(9) The Committee also welcomes the efforts made by non-governmental organizations, especially national and local organizations, to provide it with relevant reports and information, and encourages the State party to strengthen further its cooperation with them with regard to the implementation of the provisions of the Convention.

C. Subjects of concern and recommendations

Widespread torture and ill-treatment and insufficient safeguards during police detention

(10) The Committee is deeply concerned about the numerous, ongoing credible and consistent allegations, corroborated by the Special Rapporteur on torture in his report (A/HRC/7/3/Add.7) and other sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, there are insufficient legal safeguards for detainees, including:

(a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police custody for up to 61 days;

(b) Absence of systematic registration of all detainees, including juveniles, and failure to keep records of all periods of pretrial detention;

(c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members (arts. 2, 10 and 11).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a zero-tolerance policy on any ill-treatment or torture by State officials.

As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including

about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered, especially children.

The State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Furthermore, it should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.

Disproportionate use of force and widespread torture during military operations

(11) The Committee is also deeply concerned about numerous, ongoing credible and consistent allegations, corroborated by the report of the Special Rapporteur on torture and other sources, of the routine and disproportionate use of force and widespread torture and other cruel, inhuman and degrading treatment or punishment by members of the security and police forces, including by members of the armed forces, mobile police units ("Brimob") and paramilitary groups during military and "sweep" operations, especially in Papua, Aceh and in other provinces where there have been armed conflicts (arts. 2, 10 and 11).

The State party should take all necessary measures promptly to prevent security and police forces from using disproportionate force and/or torture during military operations, especially against children.

The State party should implement effective measures promptly to ensure that all persons are afforded all fundamental legal safeguards during their detention. These include, in particular, training programmes for all military personnel on the absolute prohibition of torture. The State party should also ensure that all persons detained during military operations are always registered.

Impunity

(12) The Committee is deeply concerned that credible allegations of torture and/or ill-treatment committed by law enforcement, military and intelligence services personnel are seldom investigated and prosecuted and that perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the grave nature of their crimes. The Committee reiterates its grave concerns over the climate of impunity for perpetrators of acts of torture, including military, police and other State officials, particularly those holding senior positions who are alleged to have planned, commanded or perpetrated acts of torture. It notes with regret that no State official alleged to have perpetrated torture has been found guilty, as confirmed by the Special Rapporteur on torture (arts. 2 and 12).

The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by the Convention.

In view of the State party's reaffirmed commitment at the universal periodic review to combat impunity (A/HRC/WG.6/1/IDN/4, para. 76.4), State officials should publicly announce a zero-tolerance policy for perpetrators of acts of torture and other cruel inhuman and degrading treatment or punishment and support prosecution.

Definition of torture and appropriate penalties for acts of torture

(13) While noting the acknowledgment by the State party that there was no Indonesian law which covers the definition of torture as stated in article 1 of the Convention, the Committee remains concerned that the Indonesian Criminal Code does not contain a definition of torture and also that the crime of torture as defined in article 1, section 4, of Law No. 39/1999 on Human Rights and in article 9, paragraph (*f*) of Law No. 26/2000 on Human Rights Courts is limited so that it is only applicable to "gross violations of human rights". No perpetrators of acts of torture have been convicted under these laws. The Committee is also concerned about the absence of appropriate penalties applicable to acts of torture in the Penal Code, qualified as "maltreatment" in articles 351 to 358 of the Code (arts. 1 and 4).

The Committee reiterates its previous recommendations and the recommendations of the Special Rapporteur on torture on the report on his visit to Indonesia, that the State party should, without delay, include a definition of torture in its current penal legislation in full conformity with article 1 of the Convention. Two approaches merit consideration: (a) the prompt adoption of the draft comprehensive Penal Code; and (b) the adoption of a stand-alone specific bill on torture, following the State party's example of adopting other individual laws in the field of human rights, such as those welcomed in paragraph 5 above.

The State party should also ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature, as set out in paragraph 2, article 4, of the Convention.

Coerced confessions

(14) The Committee is concerned that the current investigation system in the State party relies on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects. The Committee regrets that the State party did not sufficiently clarify the legal provisions ensuring that any statements that have been made under torture shall not be invoked as evidence under any proceedings, as required by the Convention, and did not provide statistical information on such cases (art. 15).

The State party should take the measures necessary to ensure that criminal convictions require evidence other than the confession of the detainee, and ensure that statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention.

The State party is requested to review criminal convictions based solely on confessions in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment, to take appropriate remedial measures and to inform the Committee of its findings.

Local regulations and breaches of the Convention

(15) The Committee is deeply concerned that local regulations, such as the Aceh Criminal Code, adopted in 2005, introduced corporal punishment for certain new offences. The Committee is concerned that the enforcement of such provisions is under the authority of a "morality police", the *Wilayatul Hisbah*, which exercises an undefined jurisdiction and whose supervision by public State institutions is unclear. Furthermore, the Committee is concerned that the necessary legal fundamental safeguards do not exist for persons detained by such officials, including the absence of a right to legal counsel, the apparent presumption of guilt, the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) that contravene the Convention and national law. In addition, it is reported that the punishments meted out by this policing body have a disproportionate impact on women (arts. 2 and 16).

The State party should review all its national and local criminal legislations, especially the 2005 Aceh Criminal Code, that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention.

Furthermore, such a policing body undermines the provisions of Law No. 22/1999 on Regional Autonomy and Law No. 32/2004 on Local Government, which provide that law, religion and security sectors remain under the authority of the national Government.

The State party should also ensure that the members of the *Wilayatul Hisbah* exercise a defined jurisdiction, are properly trained and operate in conformity with the provisions of the Convention, especially on the prohibition of torture and ill-treatment, and that their acts are subject to review by ordinary judicial authorities. State institutions should supervise the actions of the *Wilayatul Hisbah* and ensure that fundamental legal safeguards apply to all persons who are accused of violating matters

of its concern. The State party should further ensure that a legal aid mechanism exists to guarantee that any person has an enforceable right to a lawyer and other due process guarantees, so that all suspects have the possibility of defending themselves and of lodging complaints of abusive treatment in violation of national law and the Convention.

The State party should review, through its relevant institutions, including governmental and judicial mechanisms at all levels, all local regulations in order to ensure they are in conformity with the Constitution and with ratified legal international instruments, in particular the Convention.

Violence against women, including sexual and domestic violence

(16) The Committee is concerned by allegations of the high incidence of rape in conflict areas perpetrated by military personnel as a form of torture and ill-treatment and by the absence of investigation, prosecution and conviction of the perpetrators. In addition, the Committee is also concerned at the narrow definition of rape in the Penal Code and at the evidentiary requirement of article 185, paragraph 2, of the Code of Criminal Procedure, which requires rape complaints to be confirmed by two witnesses. While acknowledging the adoption of Law No. 23/2004 on domestic violence, the Committee remains concerned about the high reported incidence of domestic violence in the State party, the absence of implementing regulations, the insufficient awareness and training of law enforcement officials and allocation of Government funds to support the new system and the absence of statistical data on such phenomena. The Committee also noted the information provided by the delegation on female genital mutilation, and remains seriously concerned about its widespread practice in the State party (art. 16).

The State party should ensure prompt, impartial and effective investigation of all allegations of rape and sexual violence, including those perpetrated in military conflict areas, and prosecute and punish perpetrators with penalties appropriate to the grave nature of their acts. The State party should, without delay, repeal all discriminatory laws against women, including article 185, paragraph 2, of the Code of Criminal Procedure.

The State party should adopt all adequate measures to eradicate the persistent practice of female genital mutilation, including through awareness-raising campaigns in cooperation with civil society organizations.

The State party should adopt all necessary measures to implement Law No. 23/2004, which includes the training of law enforcement officials, especially in cooperation with civil society organizations, to allocate adequate funding and collect relevant information to prevent and combat domestic violence.

Juvenile justice system

(17) While noting the State party's intention to raise the minimum age of criminal responsibility to 12 years, the Committee is deeply concerned that it remains established at 8 years of age, that detained children are not fully segregated from adults, that a large number of children are sentenced to jail terms for minor offences and that corporal punishment is lawful and frequently used in juvenile prisons, such as in the Kutoarjo prison. The Committee is also concerned at the lack of a comprehensive juvenile justice system oriented to education and the socialization of children in conflict with the law. Further, there is inadequate protection of street children against violence (arts. 2 and 16).

The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with the generally accepted international norms on the subject and to abolish all corporal punishment of children.

The State party should take the necessary measures to guarantee the proper functioning of a juvenile justice system including, inter alia, by treating minors in a manner appropriate to their age, in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.

Internally displaced persons

(18) The Committee is concerned at the situation of refugees and internally displaced persons as a consequence of armed conflict, especially children living in refugee camps, including Timorese children separated from their families, who are often subject to ill-treatment (arts. 14 and 16).

The State party should take effective measures to prevent violence affecting refugees and internally displaced persons, especially children, who should be registered at birth and prevented from being used in armed conflict. The State party should also strengthen the measures taken to ensure safe repatriation and relocation of all refugees and displaced persons, in cooperation with the United Nations.

Violence against the Ahmadiyah and persons belonging to other minorities

(19) The Committee expresses its concern at incitement and acts of violence against persons belonging to minorities, in particular the Ahmadiyah and other minority religious communities. Furthermore, there are persistent, disturbing allegations of a routine failure to investigate such violence and the reluctance on the part of the police and authorities to provide the Ahmadiyah with adequate protection or to conduct prompt, impartial and effective investigations into such acts. The Committee is especially concerned that the Attorney-General has announced plans to make public a joint ministerial decree that will criminalize the activities of the Ahmadiyah. The Committee notes with concern the report of the Special Rapporteur on freedom of religion or belief, which refers to the State party's intention to prohibit Ahmadiyah activities (E/CN.4/2006/5/Add.1, para. 163); it reiterates the Special Rapporteur's view that "there is no excuse for the use of violence against its members". The Committee is especially concerned that State party officials who may authorize a decree banning the Ahmadiyah, thereby putting members of that community at further risk of ill-treatment and physical abuse, also express the view that the Ahmadiyah must refrain from "provoking" members of the community, in effect blaming the group at risk (arts. 2, 12 and 16).

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, by prosecuting and punishing all acts of violence and abuses against those individuals and ensuring implementation of positive measures of prevention and protection.

The State party should ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of those acts.

The State party should also publicly condemn hate speech and crimes and other violent acts of racial discrimination and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing in such violence. It should ensure that officials are held accountable for action or inaction that breaches the Convention.

The State party should give prompt consideration to expanding the recruitment of persons belonging to ethnic and religious minorities into law enforcement, and to respond favourably to the request of the Special Rapporteur on freedom of religion to visit the country.

Trafficking and violence against migrant workers

(20) While noting the adoption of Law No. 21/2007 on trafficking in persons, the Committee remains concerned at the high estimates by the State party of victims of trafficking, as compared to the limited number of investigations of such cases, and at the absence of information on prosecutions and convictions. The Committee is also concerned at reported cases of ill-treatment of migrant workers, especially women, reportedly abused by Indonesian recruiting companies, which often place them in situations that impair the enjoyment of their human rights while abroad, including debt bondage, forced labour and other ill-treatment, including sexual abuse (art. 16).

The State party should take all necessary measures to implement the current laws combating trafficking and provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigation into all allegations of trafficking and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.

The State party is strongly encouraged to strengthen the role of Indonesian diplomatic and consular missions abroad, in accordance with Presidential Instruction No. 6/2006, reinforcing the Citizens' Advisory Services, as well as its cooperation with countries receiving Indonesian migrant workers. The State party should ensure independent monitoring of terminal 3 of Jakarta international airport, including by civil society organizations.

Harassment and violence against human rights defenders

(21) The Committee expresses its concern at information on a common pattern of harassment and violence against human rights defenders, corroborated by the Special Representative of the Secretary-General on the situation of human rights defenders in her report on her visit to Indonesia (A/HRC/7/28/Add.2) in June 2007. Such actions severely hamper the capacity of civil society monitoring groups to function. The Committee notes with satisfaction the sentence of 25 January 2008 of the Supreme Court convicting and sentencing one person for the murder of Munir Said Thalib to 20 years of imprisonment, but regrets that the instigators of this crime have not yet been brought to justice (art. 16).

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.

Administration of justice and the judiciary

(22) The Committee is concerned about numerous extensive allegations, corroborated by the Special Rapporteur on the independence of judges and lawyers in his report (E/CN.4/2003/65/Add.2) and other sources, of corruption in the administration of justice, in particular in the judiciary, and of collusion and nepotism in the public prosecution service, as well as with members of an under-regulated legal profession (arts. 2 and 12).

As the State party continues its process of transition to a democratic regime committed to upholding the rule of law and human rights, it should strengthen the independence of the judiciary, prevent and combat corruption, collusion and nepotism in the administration of justice, and regulate the legal profession.

Human rights courts and ad hoc human rights courts

(23) The Committee is troubled that human rights courts, including ad hoc ones, which are designed to deal "specifically with gross violations of human rights", including torture, genocide and crimes against humanity, pursuant to Law No. 26/2000, were not able to secure the conviction of any of the alleged perpetrators of gross human rights violations in relation to the Tanjung Priok (1984), East Timor (1999) and Abepura (2000) cases, especially now that the Supreme Court has acquitted Enrico Guterres (arts. 2, 6 and 12).

The State party should consider amending its legislation on human rights courts, since they face serious difficulties in carrying out their judicial mandate, which has lead to de facto impunity for perpetrators of gross human rights violations.

National Commission on Human Rights

(24) The Committee remains concerned about the difficulties the National Commission on Human Rights (Komnas HAM) has had in carrying out its functions owing in part to the lack of cooperation from other State party institutions, the failure of State officials to publish the reports on its investigations, its inability to challenge a

decision of the Attorney-General not to prosecute a case, as well as the absence of security of appointment of its members. Since, according to Law 26/2000, Komnas HAM has the sole responsibility for conducting initial investigations of "gross violations of human rights", including torture, these limitations can impede efforts to prosecute perpetrators of torture. The Committee is concerned at the fact that members of the Government have stated that military officials should ignore the summons from Komnas HAM in connection with its investigations of gross violations of human rights, such as in the Talangsari, Lampung killing case (arts. 2 and 12).

The State party should ensure the effective functioning of Komnas HAM by adopting adequate measures, inter alia, by strengthening its independence, mandate, resources and procedures, and reinforcing the independence and security of its members. Members of the Government and other high-ranking officials should fully cooperate with Komnas HAM.

Lack of effective investigation and prosecution by the Attorney-General

(25) The Committee is concerned by the absence of prompt, impartial and effective investigations into allegations of torture and ill-treatment by the Attorney-General's office, including with regard to cases presented by the National Commission on Human Rights (Komnas HAM), such as in the Wasior, Wamena (1997/1998) enforced disappearances or Trisakti, Semanggi I and Semanggi II cases (art. 12).

The State party should reform the Attorney-General's office to ensure that it proceeds with criminal prosecution into allegations of torture and ill-treatment with independence and impartiality. In addition, the State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment. The State party should also publish, without delay, the reports of Komnas HAM investigations.

Monitoring detention facilities and preventive mechanism

(26) The Committee is concerned about the absence of an effective independent monitoring mechanism on the situation of detainees, including unannounced visits to all places of detention or custody. The Committee is further concerned that the State party's intention to devolve to local authorities a variety of such mechanisms may lead to different standards of monitoring of detention facilities throughout the State party (art. 2).

The State party should establish consistent and comprehensive standards for independent monitoring mechanisms of all places of detention, ensuring that any body established, at the local or the national level, has a strong and impartial mandate and adequate resources.

International judicial cooperation

(27) The Committee is concerned with the State party's lack of international judicial cooperation in investigating, prosecuting or extraditing perpetrators of acts of gross human rights violations, especially with regard to acts perpetrated in East Timor in 1999. Furthermore, it is deeply troubled at evidence that alleged perpetrators of war crimes wanted by Interpol, such as Colonel Siagian Burhanuddhin, for whom Interpol has issued a red notice, are currently serving in the Indonesian military forces. The Committee regrets the refusal of the State party to provide information on the result of its cooperation with United Nations and Timorese institutions, especially as full cooperation was recommended by the Committee in its previous concluding observations. The Committee is further concerned that the Commission on Truth and Friendship between Indonesia and Timor-Leste has a mandate to recommend amnesties, including for those involved in gross human rights violations (arts. 5, 6, 7, 8 and 9).

The State party should fully cooperate with Timorese, United Nations and relevant international institutions, in particular by providing assistance in investigations or court proceedings, including affording full access to relevant files, authorizing visits and transferring suspects wanted by Interpol or other relevant authorized bodies. The State party should investigate actively and secure alleged suspects of human rights violations, who should be extradited or prosecuted in the State party.

The State party should not establish nor engage in any reconciliation mechanism that promotes amnesties for perpetrators of acts of torture, war crimes or crimes against humanity.

Non-refoulement and risk of torture (art. 3)

(28) The Committee is concerned by the failure of the State party to clarify how it includes in its national laws or practice the prohibition on returning a person to a country where he or she faces a substantial risk of torture, and hence how the State party ensures that its obligations under article 3 of the Convention are fulfilled (art. 3).

Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

When determining the applicability of its obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for the review of the decision are in place and sufficient legal defence available for each person subject to extradition, and ensure effective post-return monitoring arrangements.

The State party should adopt appropriate legislation to incorporate into domestic law its obligation under article 3 of the Convention, thereby preventing any persons from being expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subject to torture.

Universal jurisdiction

(29) The Committee regrets the lack of clarity and information on the existence of the necessary legislative measures establishing the State party's jurisdiction over acts of torture (arts. 5, 6, 7 and 8).

The State party should establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.

Truth and Reconciliation Commission

(30) The Committee acknowledges that the Constitutional Court has repealed Law No. 27/2004 on the Truth and Reconciliation Commission because it would have sanctioned amnesty for non-derogable offences. Nonetheless, the Committee remains concerned about the mandate of a future commission, as cited in the State party's reply to the Committee's list of issues (arts. 2, 12 and 14).

The State party should consider carefully the mandate of the future Commission of Truth and Reconciliation, in the light of other similar international experiences and in compliance with its obligation under the Convention. Such a commission should, inter alia, be empowered to investigate gross human rights violations and compensate victims while proscribing amnesties for perpetrators of acts of torture.

Witness and victim protection

(31) While welcoming the adoption of Law No. 13/2006 on Witness and Victim Protection, the Committee remains concerned about the absence of implementing regulations, the mistreatment of witnesses and victims, and the insufficient training of law enforcement officials and allocation of Government funds to support the new system (arts. 12, 13 and 14).

The State party should, without delay, establish a witness and victim protection body, with all relevant measures required to implement Law No. 13/2006, including the allocation of necessary funding for the functioning of such a new system, the adequate training of law enforcement officials, especially in cooperation with civil society organizations, and an appropriate gender-balanced composition.

Compensation and rehabilitation

(32) The Committee expresses its concern about the lack of compensation for victims of torture and other cruel, inhuman or degrading treatment, and at the limited measures for the rehabilitation of victims of torture, ill-treatment, trafficking and domestic and sexual violence (art. 14).

The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are provided to all victims of torture, ill-treatment, trafficking and domestic and other sexual violence, including medical and psychological assistance.

Legal aid

(33) The Committee expresses its concern about the difficulties persons, including members of vulnerable groups, experience in their efforts to exercise the right to make complaints and to obtain redress and fair and adequate compensation as victims of acts of torture (arts. 13 and 14).

The State party should take measures to provide an effective free legal aid system, in particular for persons at risk or belonging to groups made vulnerable. It should ensure that the system is adequately resourced to guarantee that all victims of acts of torture and ill-treatment can exercise their rights under the Convention.

Human rights training

(34) While acknowledging a variety of programmes and manuals prepared by the State party, the Committee regrets the insufficient training with regard to the provisions of the Convention for law enforcement, military and security personnel, as well as for judges and prosecutors. The Committee also notes with concern the lack of specific training of medical personnel in detention facilities to detect signs of torture and ill-treatment (arts. 10 and 11).

The State party should reinforce its training programmes for all law enforcement and military personnel on the absolute prohibition of torture, as well as for all members of the judiciary and prosecutors on the specific obligations under the Convention.

The State party should also ensure adequate training for all medical personnel involved with detainees, to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Istanbul Protocol.

Data collection

(35) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and military personnel, as well as on trafficking, enforced disappearances, internally displaced persons, violence against children, ill-treatment of migrant workers, violence against minorities and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, enforced disappearances, internally displaced persons, violence against children, ill-treatment of migrant workers, violence against minorities and domestic and sexual violence, especially in military conflict areas, as well as on compensation and rehabilitation provided to the victims.

(36) The Committee encourages the State party to implement the recommendations contained in the report of the Special Rapporteur on torture on his visit in November 2007 (A/HRC/7/3/Add.7), the report of the Special Rapporteur on the human rights of migrants on his visit in December 2006 (A/HRC/4/24/Add.3), the report of the Special Representative of the Secretary-General on the situation of human rights defenders on her visit in June 2007 (A/HRC/7/28/Add.2) and the report of the Special Rapporteur on the independence of judges and lawyers on his visit in July 2002 (E/CN.4/2003/65/Add.2).

(37) The Committee also encourages the State party to consider making the declaration under article 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider individual communications.

(38) The Committee reiterates its recommendation that the State party consider withdrawing its reservations and declarations to the Convention.

(39) In view of the commitment of Indonesia to ratify the Optional Protocol to the Convention by 2009, as indicated in its second national human rights action plan, the Committee encourages the State party to consider the establishment of a national preventive mechanism.

(40) The State party should consider ratifying the major United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(41) The State party should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, by means of official websites and the media, in particular to groups made vulnerable.

(42) The Committee invites the State party to submit its core document in accordance with the requirements of the common-core document in the harmonized guidelines on reporting, as recommended by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(43) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 15, 19, 20, 21 and 25 above.

(44) The State party is invited to submit its next periodic report, which will be its third periodic report, by 30 June 2012.

43. Sweden

(1) The Committee considered the fifth periodic report of Sweden (CAT/C/SWE/5) at its 811th and 812th meetings (CAT/C/SR.811 and 812), held on 29 and 30 May 2008, and adopted, at its 827th meeting (CAT/C/SR.827), the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the fifth periodic report of Sweden and the information presented therein. The Committee also expresses its appreciation for the State party's thorough written responses to the list of issues (CAT/C/SWE/Q/5/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken by the State party in order to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanation during the dialogue.

B. Positive aspects

(3) The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has acceded to or ratified a number of international instruments, including:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 19 January 2007;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 1 July 2004;

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 24 April 2003; and

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 February 2003.

(4) Furthermore, the Committee welcomes the ratification of the Optional Protocol to the Convention, on 14 September 2005, and the recent visit of the Subcommittee on Prevention of Torture (SPT) to Sweden from 10 to 14 March 2008.

(5) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and ill-treatment, in particular:

(a) The amendment of the Swedish Aliens Act in 2006, which introduces a new appeal system, includes an explicit provision on non-refoulement and provides for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation;

(b) The adoption of new legislation on fundamental safeguards, including access to a lawyer and notification of custody that entered into force on 1 April 2008 (Law No. 2008:67);

(c) The adoption of a national human rights plan of action for the period 2006-2009;

(d) The adoption, in November 2007, of the action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships (Govt. Comm. 2007/08:39);

(e) The common Action Plan developed by the Border Control Police, the Migration Board and the Social Services which aims to minimise the risks of unaccompanied asylum-seeking children disappearing and becoming victims of trafficking.

(6) The Committee commends the State party for its commitment to international human rights obligations, in particular the clear and unequivocal stance that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute.

(7) The Committee notes with satisfaction that the Government has allocated additional resources to the Prison and Probation Administration to create better facilities, both in prisons and remand prisons, and to build a number of new prisons and remand prisons to increase their capacity.

(8) The Committee notes with appreciation that the State party is continuously reviewing and analysing its compliance with international human rights obligations through commissions and studies established for such purpose and the appointment of special investigators.

C. Principal subjects of concern and recommendations

Definition of torture

(9) Notwithstanding the State party's assertion that under the Swedish Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable, the Committee regrets that the State party has not changed its position with regard to the incorporation into domestic law of the crime of torture as defined in article 1 of the Convention (arts. 1 and 4).

The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention as distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.

Statute of limitations

(10) The Committee notes with concern that the offence of torture, which as such does not exist in the Swedish Criminal Code, is punishable under other provisions of the Criminal Code, and is, therefore, subject to the statute of limitations. While noting information provided by the delegation that a review of the statute of limitations will be conducted, the Committee is concerned that the statute of limitations applicable to provisions of the Criminal Code may prevent investigation, prosecution and punishment of these grave crimes, in particular when the punishable act has been committed abroad. Taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations (arts. 1, 4 and 12).

The State party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Fundamental safeguards

(11) The Committee notes with appreciation the new legislation on fundamental safeguards that entered into force on 1 April 2008 in respect of access to a lawyer and notification of custody. However, it is concerned that a public defence counsel will only be appointed once the person is considered to be a suspect. The Committee regrets that Swedish legislation does not include a legal provision on access to a doctor and that a request to see a doctor is evaluated by, and therefore left to the discretion of, the police officer in charge. It further regrets reports that notification of custody is not systematically delivered to family members and is frequently delayed with reference to possible interference with the investigation. The Committee notes that an information leaflet on the fundamental rights afforded to persons suspected of a crime and therefore detained and deprived of his or her liberty has been produced by the National Police Board, in cooperation with the Swedish Prosecution Service, and that this leaflet is currently being translated into the most commonly used languages (arts. 2, 11, 13 and 16).

The State party should take effective measures to ensure that all detainees are afforded fundamental legal safeguards in practice, including the right to have access to a lawyer and a doctor and the right of detained persons to inform a close relative or another third party of their choice of their situation. The Committee emphasizes that persons in custody should benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty and throughout the investigation phase, the whole of the trial and during appeals. Furthermore, the State party should finalize the translation of the information leaflet on fundamental rights as soon as possible and widely disseminate it to all places where a person may be deprived of his or her liberty.

Detention of asylum-seekers

(12) The Committee notes that positive changes have occurred in the Migration Board's policy on reception of undocumented asylum-seekers and pre-deportation detention which have resulted in a decrease in detention rates. The Committee is, however, concerned that pre-deportation detention is common and it regrets that there is no absolute limit on the length of time that an asylum-seeker can be detained. The Committee is also concerned at information that asylum seekers who are a risk to themselves or others are sometimes placed in remand prisons (arts. 2, 3, 11 and 16).

The State party should take effective measures to ensure that detention of asylum-seekers is used only in exceptional circumstances or as a measure of last resort, and then only for the shortest possible time. Furthermore, the State party should consider other placement alternatives for asylum-seekers who are in need of care that are suitable for their particular condition.

Non-refoulement

(13) The Committee welcomes the inclusion in the Aliens Act of a new ground for issuing a residence permit whereby an alien will normally be granted such a permit when the Committee, or another international complaints body, has found the State party to be in breach of its treaty obligations. The Committee also notes the statement by the delegation that the State party has not participated in any extraordinary renditions and that it has not obtained or

tried to make use of diplomatic assurances in any case other than the cases concerning Mr. Agiza and Mr. Alzery. The Committee takes note of the extensive information presented by the State party on measures taken to implement the Committee's decision in *Agiza v. Sweden*, including the issuance of visas to family members and continued visits to the prison. The Committee also notes that the requests for residence permit and compensation are currently awaiting resolution. However, the Committee regrets the lack of full implementation of the key elements in this decision, in particular an in-depth investigation and prosecution of those responsible, as appropriate. It further regrets the lack of full implementation of the Views of the Human Rights Committee in *Alzery v. Sweden*, including the recommended remedies (arts. 3 and 14).

The State party should take all necessary measures to implement the decision of this Committee and the Views of the Human Rights Committee concerning Mr. Agiza and Mr. Alzery and provide them with fair and adequate compensation. Furthermore, the State party should undertake an in-depth investigation into the reasons for their expulsion and prosecute those responsible, as appropriate. Finally, the State party should take effective measures to ensure that it complies fully with its obligations under article 3 of the Convention in order to prevent similar incidents from occurring in the future.

(14) The Committee notes that the State party is in the process of negotiating a Memorandum of Understanding with the Government of Afghanistan in connection with its participation in the International Security Assistance Force (ISAF) operation (art. 3).

It is the Committee's constant view, as reiterated in its general comment on article 2 of the Convention (CAT/C/GC/2) that article 3 of the Convention and its obligation of non-refoulement apply to a State party's military forces, wherever situated, where they exercise effective control, de jure or de facto, over an individual. With regard to the possible transfer of detainees within a State party's effective custody to the custody of any other State, the State party should ensure that it complies fully with article 3 of the Convention in all circumstances.

Training

(15) The Committee notes with appreciation the detailed information provided by the State party on training programmes for, inter alia, the police forces, the Prosecution Authority and the Prison and Probation Administration, including prison staff. The Committee also welcomes the information provided on the special police tactics, including employment of non-violent means and crowd control. However, the Committee regrets the limited information provided on monitoring and evaluation of such training programmes and the lack of available information on the impact of the training conducted for law enforcement officials and prison staff, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop educational programmes to ensure that all law enforcement officials and prison staff are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant personnel, including Swedish embassy staff, should receive specific training on torture and ill-treatment and the Committee recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of such training. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Imposition of restrictions on remand prisoners

(16) The Committee expresses its concern at information that between 40 to 50 per cent of remand prisoners are subjected to restrictions and that remand prisoners are currently unable to effectively challenge and appeal decisions to impose or maintain specific restrictions. The Committee also regrets the lack of official statistics on the use of such restrictions. However, the Committee notes that a proposal of the special investigator appointed by the Government, which includes regulatory changes aimed at securing a uniform and legally secure use of restrictions, is currently under consideration in the Ministry of Justice (arts. 2, 11 and 16).

The State party should take appropriate measures to further reduce the imposition of restrictions as well as their length. The Committee is of the view that restrictions should always be based on concrete grounds, individualized and proportionate to the case at hand and lifted immediately when the grounds for their imposition no longer exist. As an exceptional measure, they should be interpreted narrowly, and in case of doubt, in favour of the individuals. Furthermore, the Committee notes that the Government has recently enjoined the Prosecution Authority to account, by the end of the year, for the number of persons in detention in 2008 and the number of cases where restrictions have been imposed and encourages the State party to submit this information to the Committee.

Coercive measures, including physical restraints and isolation

(17) The Committee regrets that the State party could not provide aggregated data on the average length of the use of physical restraints or isolation in psychiatric institutions and hospitals. However, it notes that the National Board of Health and Welfare is currently preparing an on-line register for compulsory mental care and forensic mental care with the aim, inter alia, to produce reliable statistical data on the use of coercive measures (arts. 11 and 16).

The State party should review the use of physical restraints and further limit the use of solitary confinement as a measure of last resort and for as short a time as possible under strict supervision. The State party is encouraged to complete the on-line register as soon as possible.

Prompt and impartial investigations

(18) The Committee notes that the National Police-related Crimes Unit was established in 2005 and that the 2007 report "Summa Summarum - an independent authority for investigations of criminal allegations against police officers and prosecutors?" did not recommend the establishment of an independent authority for such investigations but rather a more clearly separated unit for internal investigations within the police. However, the Committee is concerned at information that the basic precepts of independence, effectiveness and promptness may not have been observed in all cases of complaints of police misconduct (arts. 12 and 16).

The State party should strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. The Committee is of the view that such investigations should not be undertaken by or under the authority of the police, but by an independent body.

(19) The Committee notes that Swedish courts have jurisdiction with regard to all crimes committed by Swedish troops deployed abroad in the course of duty, regardless of the law of the state where the criminal act may have been committed. The Committee also takes note of the information provided by the delegation in respect of the incident that took place during the international UN/EUFOR Operation Artemis in the Congo in 2003. However, the Committee expresses its concern at allegations that a prisoner was tortured by French soldiers in the presence of Swedish soldiers and that the State party did not call for a prompt and impartial investigation in this respect (arts. 5 and 12).

The State party should call for prompt and impartial investigations if it receives information indicating that there are reasonable grounds to believe that acts of torture or ill-treatment have been committed while conducting its international operations. The State party should also ensure that Swedish troops are instructed to report such incidents and take other measures, as appropriate.

Compensation and rehabilitation

(20) While noting information on treatment and social rehabilitation services provided to, inter alia, victims of torture and ill-treatment, the Committee is concerned that, as these services are conducted in many different ways, it is difficult to get an overview of the actual situation, including possible regional discrepancies. In this respect, the Committee regrets the lack of aggregate information on how often these different kinds of services have been utilized or on what resources are allocated to victims of torture or ill-treatment for psychiatric services. Furthermore, the Committee is concerned that there has been no case decided by or is currently pending before any Swedish courts concerning claims for compensation or other kinds of redress to victims of torture (art. 14).

The State party should continue to strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full rehabilitation as possible.

Rights of vulnerable groups and discrimination

(21) The Committee notes that the 2001 action plan against racism, xenophobia, homophobia and discrimination has been incorporated in the new human rights action plan for the period 2006-2009 and it welcomes the recent initiative of the Government to merge the current anti-discrimination legislation into one single Anti-Discrimination Act that will cover seven grounds of discrimination.[2] However, the Committee expresses its concern at reports of continued discrimination of vulnerable groups, in particular the Roma. The Committee is also concerned at reports of hate crimes in the State party, including a high number of racial hate crimes (arts. 2, 12, 13 and 16).

The State party should intensify its efforts to combat discrimination against vulnerable groups, including the Roma. In this respect, the State party should take further steps to combat racial discrimination, xenophobia and related violence as well as hate crimes, to ensure prompt, impartial and thorough investigations into all such motivated violence and prosecute and to punish perpetrators in all cases with appropriate penalties which take into account the grave nature of their acts.

Prohibition of any statement obtained under torture from being invoked as evidence

(22) The Committee takes note of information provided that the Swedish penal and procedural system, which is based on the principle of free examination of evidence, contains several provisions, including procedural safeguards, to prevent public officials from using torture in criminal investigation. The Committee, however, expresses its concern at the fact that Swedish law does not contain specific provisions ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, as required by article 15 of the Convention.

The State party should ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.

Domestic violence

(23) The Committee, while noting various measures undertaken by the State party, including the 2007 Action Plan on Men's Violence against Women, expresses its concern about the persistence of violence against women and children, including domestic violence and crimes committed against women and children in the name of honour. The Committee further regrets the lack of State-wide statistics on domestic violence, including statistical data on complaints, prosecutions and sentences. Furthermore, the Committee is concerned at information that the provision of social services varies between municipalities and that some municipalities are unable to offer sheltered housing to all women victims of violence, including women with special needs such as women with disabilities (arts. 2, 12 and 16).

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence and crimes committed against women and children in the name of honour. The State party should also monitor the provision of social services with a view to ensuring the availability of a sufficient number of shelters, equipped to accommodate women with special needs, including women with disabilities, throughout the territory of the State party, and their adequate financing.

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[2] Discrimination on the grounds of sex, sexual orientation, gender identity, ethnic background, religion or other religious beliefs, disability, and age.

Data collection

(24) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, violence against women and children, including domestic violence and crimes committed against women and children in the name of honour, as well as compensation and rehabilitation (arts. 12, 13 and 16).

The State party should establish an effective system to gather all statistical data relevant to monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, violence against women and children, including domestic violence and crimes committed against women and children in the name of honour, as well as on compensation and rehabilitation provided to the victims. The Committee recognizes the sensitive implications of gathering personal data and emphasizes that appropriate measures should be taken to ensure that such data collected is not abused.

National preventive mechanisms under the Optional Protocol to the Convention

(25) The Committee notes that the State party has designated the Parliamentary Ombudsman's Institution and the Chancellor of Justice as its national preventive mechanisms (NPMs) under the Optional Protocol. However, it expresses its concern at the fact that these institutions are reactive, not preventive, in nature, that neither organizations have multi-professional staff and that the Government has not allocated any additional resources which would allow these institutions to deal with the new tasks, as it has been brought to the Committee's attention by the NPMs themselves.

The Committee recommends that the State party should re-examine the decision taken by the Government of Sweden to designate the Parliamentary Ombudsman's Institution and the Chancellor of Justice as the Swedish NPMs or, alternatively, ensure their effective functioning as preventive mechanisms by, inter alia, allocating the necessary resources in order to ensure that it meets the requirements under the Optional Protocol.

(26) The Committee notes with appreciation the State party's previous contributions to the United Nations Voluntary Fund for Victims of Torture and encourages it to resume its support.

(27) The Committee invites the State party to consider ratifying the United Nations human rights treaties to which it is not yet a party, i.e. the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(28) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies (see HRI/GEN/2/Rev.4).

(29) The State party is encouraged to disseminate widely the reports submitted by Sweden to the Committee and the concluding observations and summary records, in appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11, 13, 16 and 17 above.

(31) The State party is invited to submit its seventh periodic report by 30 June 2012.

44. The former Yugoslav Republic of Macedonia

(1) The Committee against Torture considered the second periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/2) at its 822nd and 825th meetings (CAT/C/SR.822 and 825), held on 7 and 8 May 2008, and adopted, at its 832nd and 833rd meetings (CAT/C/SR.832 and 833), held on 15 May 2008, the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of the former Yugoslav Republic of Macedonia as well as the replies to the list of issues which provided additional information on the legislative, administrative, judicial and other measures taken by the State party for the implementation of the Convention. The Committee also notes with satisfaction the constructive dialogue held with a high-level and multisectoral delegation.

B. Positive aspects

(3) The Committee welcomes:

(a) The amendments in the Criminal Code in 2004, and notably the incorporation of the crime of torture in domestic legislation;

(b) The adoption of an action plan to implement the last recommendations of the European Committee on the Prevention of Torture, after its last visit in 2006;

(c) The implementation of a strategy to prevent and combat domestic violence;

(d) The introduction of a separate offence of trafficking in persons at the beginning of 2008;

(e) The wide-ranging reform aimed at improving the judicial system, such as the Law on the Judicial Council, the Law on the Academy for Training of Judges and Public Prosecutors and the Law on the Public Prosecutor's Office.

(4) The Committee welcomes the State party's ratification of the Rome Statute of the International Criminal Court on 6 March 2002.

C. Main issues of concerns and recommendations

Article 2

(5) The Committee is concerned that the inclusion in the scope of the Amnesty Law adopted in 2002 of "all criminal acts related to the 2001 conflict", may create the conditions for impunity for serious violations of international human rights and humanitarian law, including violations of the Convention against Torture.

The Committee, as recalled in its general comment No. 2, considers that amnesties or other impediments which preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability. In this respect, the State party should ensure that serious violations of international human rights and humanitarian law are not included in any amnesty and are thoroughly investigated and, if appropriate, prosecuted and sanctioned.

(6) The Committee, while noting the current legislative efforts to strengthen the independence of the Public Prosecution Office, is concerned at its inadequate functioning, in particular when it comes to promptly investigate allegations of torture and other cruel, inhuman or degrading treatment. This concern has also been articulated in various decisions of the European Court of Human Rights.

The State party should ensure the independence and the effective functioning of the Public Prosecution Office as to ensure, inter alia, that allegations of torture and cruel, inhuman or degrading treatment are promptly and impartially investigated and, if appropriate, prosecuted and sanctioned. To this end, the State party should swiftly complete the reform process aimed at strengthening the Office's independence and effectiveness.

(7) The Committee notes that the Sector for Internal Control and Professional Standards (SICPS) within the Ministry of Interior is the body mandated to monitor the conduct of the police, but is concerned that an independent and external oversight mechanism for acts committed by the police is lacking. In this respect, while welcoming the adoption of a law strengthening the Office of the Ombudsman in 2003, it is concerned that this Office has still limited functions, and that its decisions are not binding.

The State party should intensify its efforts to establish a system of independent and impartial monitoring to investigate and monitor alleged police misconduct. In this respect, the State party should consider strengthening and extending the mandate of the Ombudsman, including the capacity to investigate acts committed by police officers. Furthermore, cooperation between the SICPS and the Ombudsman should be improved and adequate follow-up should be given to the Ombudsman's recommendations by all relevant authorities.

Article 3

(8) The Committee is concerned at the inadequate functioning of the system for processing and determining asylum claims, especially with respect to those claims channelled through the so-called "accelerated procedure".

The State party should ensure that a thorough review of each individual case is provided for asylum claims. In this respect, the State party should ensure that effective remedies are available to challenge the decision not to grant asylum, especially when the claim is channelled through an accelerated procedure. Such remedies should have in any case the effect of suspending the execution of the above decision, i.e. the expulsion or deportation.

(9) The Committee takes note of the State party's position that the SICPS has not found any wrongdoing of any officials of the Ministry of Interior or any other authority in the well-known case of Mr. Khaled El-Masri. However, - noting the concerns expressed by various international bodies, including the Council of Europe Committee on Legal Affairs and Human Rights on the matter, - the Committee is concerned that the events surrounding the arrest, detention and transfer to a third country of Mr. El-Masri have not been fully clarified.

The Committee recalls its position that responses to the threat of international terrorism adopted by States parties to the Convention must be in conformity with the obligations undertaken by them in ratifying it. In this respect, the State party should ensure that a new thorough investigation is undertaken in order to assess whether the treatment of Mr. El Masri has been in compliance with the Convention and other international human rights standards.

Article 4

(10) The Committee notes with concern the data showing that very low penalties have been imposed on persons convicted for the crimes of torture (article 142 of the Criminal Code) and ill-treatment while carrying out official duty (article 143 of the Criminal Code) (arts. 4 and 16).

The State party should ensure that the acts of torture are punished by appropriate penalties which take into account their grave nature. The Committee, underlining that the conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and that, therefore, the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment, believes that appropriate penalties should likewise be applied to acts of cruel, inhuman or degrading treatment.

Article 5

(11) The Committee is concerned that, in case of acts of torture committed abroad, the State party may only establish its jurisdiction thereto when the alleged offender is present in its territory if the punishment foreseen for the offences in the country where they have been committed is, at least, of five years of imprisonment. In this respect, the Committee is concerned that this may create situations of impunity, in cases where the country in which acts of torture are committed is not a party to the Convention, does not have a specific offence of torture in its legislation, or sanctions it with penalties less than five years of duration.

The State party should consider abolishing the double criminality requirement for the crime of torture and apply the *aut dedere aut judicare* principle when an alleged offender for acts of torture committed abroad is present in its territory, in accordance with article 5, paragraph 2, of the Convention.

Articles 6, 7, 8 and 9

(12) The Committee, while welcoming the State party's ratification of the Rome Statute of the International Criminal Court, regrets the bilateral agreement concluded with another State party to the Convention aimed at exempting the latter's nationals present in the State party's territory from being extradited to the International Criminal Court for crimes within the jurisdiction of the Court, including torture.

The State party should, in accordance with article 6 and 8, consider reviewing the relevant terms of those agreements which prevent the nationals of certain States who are on the territory of the former Yugoslav Republic of Macedonia from being brought before the International Criminal Court.

(13) The Committee takes note of the information received by the State party with respect to the developments on the investigations and prosecution of the cases of enforced disappearances occurred during the conflict in 2001.

The Committee recommends that the State party complete a thorough investigation of the above-mentioned cases of disappearances, including those related to the four cases referred back to the State party from the International Criminal Tribunal for the Former Yugoslavia, and prosecute and punish the perpetrators of this crime. The State party should make the results of these investigations public as well as provide information in this respect to the Committee (arts. 6, 7, 8, 9, 12 and 13).

Article 10

(14) The Committee notes the State party's efforts with respect to education and information regarding the prohibition of torture, including the training organized in cooperation with the OSCE for 5,500 police officers on "Police, Human Rights and Freedoms" in 2004 and 2005 as well as the plan to establish by the end of 2008 a new permanent training centre for prison staff. However, the Committee is concerned that training programmes for medical personnel for the identification and documentation of cases of torture, as well as for the rehabilitation of victims, seem to be lacking. Likewise, training to develop a more gender sensitive approach both in legal and medical institutions is inadequate.

The State party should:

(a) Ensure that education and training of all law enforcement personnel, are conducted on a regular basis;

(b) Include in training modules on interrogation rules, instructions and methods, and specific training for medical doctors on how to identify signs of torture, and cruel, inhuman or degrading treatment;

(c) Regularly evaluate the training provided to its law-enforcement officials, as well as, ensure regular and independent monitoring of their conduct;

(d) Strengthen its efforts to implement a gender sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Article 11

(15) The Committee, while noting the extensive reform planned for the penitentiary system, including the construction of new facilities and the renovation of the existing ones, is concerned about the current material conditions of detention and the problems of overcrowding in the places of deprivation of liberty.

The State party should ensure the urgent implementation of the penitentiary system reform, including the duly establishment of a new network of penitentiary institutions as envisaged in the Law on Execution of Sanctions. The State party should also improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care.

Articles 12, 13 and 14

(16) The Committee is concerned about allegations of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel and notes with concern a lack of prompt and effective investigations and prosecutions in this respect (see also paragraph 5 above). In particular, the Committee is concerned at allegations reporting that the most serious abuses would be committed by a special unit of the police named "Alfi", mandated to counter urban crimes and work in plain clothes. In this respect, the Committee takes note of the information received by the delegation that the "Alfi" unit is going to terminate its activities soon.

The State party should ensure that:

(a) All allegations of acts of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement officials, - including those committed by members of the "Alfi" unit, - are investigated promptly, independently and impartially and, when appropriate, prosecuted and punished;

(b) Laws and the regulations relating to the use of force and weapons by law enforcement officials are consistent with internationally recognized standards;

(c) Victims of torture or ill-treatment have the right to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.

(17) The Committee notes with concern the State party's assertion that there are no services available in the State party to deal specifically with the treatment of trauma and other forms of rehabilitation for torture victims.

The State party should ensure that appropriate services are available for the rehabilitation of victims of torture.

Article 15

(18) The Committee is concerned that the State party lacks clear legislation totally excluding admission of evidence obtained as a result of torture. Furthermore, the Committee is concerned over reports indicating that in practice evidence obtained under ill-treatment has been used in criminal proceedings.

The State party should prohibit, in the legislation as well as in practice, admissibility and use in criminal proceedings of any evidence obtained as a result of torture or ill-treatment, in compliance with article 15 of the Convention.

Article 16

(19) The Committee, while noting various measures undertaken by the State party, including the implementation of a strategy to prevent domestic violence and the inclusion, in 2004, of a separate crime of domestic violence in the Criminal Code, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at the low numbers of investigations and prosecutions of cases of domestic violence.

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence, and ensure adequate implementation of the national strategy to prevent domestic violence. The State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for officials (law enforcement agencies, judges, lawyers and social workers) who are in direct contact with the victims as well as for the public at large.

(20) The Committee notes with concern reports of intolerance and hatred towards ethnic minorities, especially Roma. In this respect, the Committee is concerned about information showing that instances of ill-treatment by law enforcement officials, especially the police, often involve persons belonging to ethnic minorities.

The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. In this respect, the State party should strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to ethnic minorities, in particular Roma, including by ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and information campaign constantly communicate the message that discrimination and violence will not be tolerated and will be sanctioned accordingly.

(21) The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and it is a common and accepted means of childrearing.

The State party, taking also into account the recommendation in the United Nations study on violence against children, should adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and public education measures.

(22) The Committee recognizes the efforts undertaken to combat human trafficking, including the recent introduction of a separate offence of trafficking, but it is still concerned that trafficking in women and girls, especially for the purpose of sexual exploitation, is a serious problem in the State party, and that recovery and reintegration services are insufficient.

The State party should continue to prosecute and punish trafficking in persons, especially women and children, and intensify its efforts to provide recovery and reintegration services to victims. The State party should also conduct nationwide awareness-raising campaigns and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.

(23) The Committee notes with appreciation the State party's statement that a draft Bill on ratification of the Optional Protocol to the Convention is currently under Governmental review. In this respect, it encourages the State party to ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.

(24) The Committee invites the State party to become a party to the following human rights treaties, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

(25) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions, and penal or disciplinary sanctions; and on pretrial detainees and convicted prisoners. Information is further requested on compensation and rehabilitation provided to the victims.

(26) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(27) The Committee requests the State party to provide, within one year, information on response to the Committee's recommendations contained in paragraphs 6, 8, 13 and 20 above.

(28) The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.

(29) The State party is invited to submit its next periodic report, which will be considered as the third periodic report, by 30 June 2012 at the latest.

45. Zambia

(1) The Committee against Torture ("the Committee") considered the second periodic report of Zambia (CAT/C/ZMB/2) at its 824th and 827th meetings, held on 8 and 9 May 2008 (CAT/C/SR.824 and 827), and adopted, at its 831st meeting and 832nd meeting on 14 and 15 May 2008 (CAT/C/SR.831 and 832), the following Concluding observations.

A. Introduction

(2) The Committee welcomes the report of Zambia, and the open and frank dialogue held with the high-level delegation, as well as the replies to the questions raised during the dialogue. The Committee also welcomes the efforts made by the State party to acknowledge the challenges and difficulties faced in the implementation of the Convention. The Committee regrets, however, that the State party was unable to implement all the recommendations made by the Committee during the consideration of the initial report of Zambia, in 2001 (A/57/44, paras. 59 to 67).

Positive aspects

(3) The Committee welcomes the following positive developments:

(a) The ratification of the Rome Statute of the International Criminal Court on 13 November 2002;

(b) The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 24 April 2005;

(c) The establishment of the National Constitutional Conference (Act No. 19 of 2007) mandated to undertake a constitutional reform process;

(d) The abolition of corporal punishment through the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003, the Education Act (Amendment) Act No. 11 of 2003, and the Prisons (Amendment) Act No. 16 of 2004;

(e) The Prisons (Amendment) Act No. 16 of 2004 which provides for the establishment of a Health Care Service within prisons; the release of prisoners on parole by the Commissioner of Prisons on the recommendation of the Parole Board, and the discharge from prison of any terminally ill prisoner upon approval of the Minister;

(f) The enactment of Guidelines in 2003 by the Ministry of Home Affaires which stipulate standards for the interrogation of suspects and the treatment of persons in custody; and

(g) The creation of the Zambia Police Forensic Laboratory, available to officers in Lusaka, which offers police investigators qualitative scientific methods of investigating crime rather than relying on confession statements.

B. Subjects of concern and recommendations

Definition of torture

(4) The Committee reiterates its concern expressed in its previous conclusions and recommendations (A/57/44, para. 64) with regard to the fact that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions in respect of several articles, in particular:

(a) The definition of torture (art. 1);

(b) The criminalization of torture (art. 4);

(c) The prohibition of cruel, inhuman or degrading treatment in the penal system (art. 16);

(d) Recognition of torture as an extraditable offence (art. 8);

(e) Systematic review of interrogation rules (art. 11);

(f) Jurisdiction over acts of torture, including those committed abroad (art. 5).

The Committee reiterates its previous recommendations and urges the State party to speedily incorporate the Convention into its legal system and include in its criminal legislation and other provisions criminalizing acts of torture a definition of torture, that covers all the elements contained in article 1 of the Convention and appropriate penalties which take into account the grave nature of such acts.

Absolute prohibition of torture

(5) The Committee is concerned that article 25 of the State party's Constitution does not clearly stipulate the absolute prohibition of torture regardless of state of war or public emergency (art. 2).

The State party should incorporate in its Constitution and other laws the principle of an absolute prohibition of torture whereby no exceptional circumstances whatsoever may be invoked to justify it.

Non-refoulement and extradition

(6) The Committee welcomes the cooperation between the State party and UNHCR which aims to strengthen the State party's capacity to protect refugees and notes with appreciation the positive steps already taken by it to recognize the need to replace the 1970 Refugees Control Act by a revised Refugee Bill. It is concerned, however, that the Refugee Control Act currently in force, does not explicitly provide for protection against non-refoulement and that the current expulsion, return and extradition procedures and practices may expose individuals to the risk of torture (art. 3).

The State party should ensure that the new Refugee Bill and the Immigration and Deportation Act fully comply with article 3 of the Convention. The State party should also provide the Committee with detailed information on cases of denial of extradition, return or expulsion due to the risk that the person might be subjected to torture, ill-treatment or the death penalty upon return.